No. 98-1037

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

GEORGE SMITH, Warden,

Petitioner,

vs.

LEE ROBBINS,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOINT APPENDIX

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of the State of California
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PETITION FOR WRIT OF CERTIORARI FILED DECEMBER 17, 1998
WRIT OF CERTIORARI GRANTED MARCH 8, 1999

337 pp

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Proceedings include all events. TERMED
2:94cv1157 APPEAL
Lee Robbins v. George Smith, et al.

U.S. District Court
Central District of California (Western Div.)

CIVIL DOCKET FOR CASE #: 94-CV-1157

Lee Robbins v. George Smith, et al.
Filed: 02/24/94
Assigned to: Judge George H. King
Demand: $0,000 Nature of Suit: 530
Lead Docket: None Jurisdiction: Federal Question
Dkt# in other court: None

Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

2/24/94	1	PETITION FOR WRIT OF HABEAS CORPUS by Petitioner Lee NMI Robbins in State custody w/affdt in f/p. Mld cpy to A/G State of CA., 300 S. Spring St., Suite 500 N Tower, LA CA 90013 (ca) [Entry date 02/25/94]
2/24/94	2	NOTICE and ORDER of Reference to Magistrate Judge George H. King (ca) [Entry date 02/25/94]
2/24/94	--	CASE REFERRED to Magistrate Judge George H. King (ca) [Entry date 02/25/94]

3/2/94 3 ORDER Tht the attorney general of the state of Ca fl a return to the petn on/or bef 3/23/94, on the issue of exhaustion; if exhaustion is conceded, then on the merits. Respondents' return, if addressed to the merits, shall be accompanied by all state records, & address the merits of each claim raised in the Pet. Respondents shall srv a copy of the return upon petnr prior to the flng thereof. by Magistrate Judge George H. King (bp) [Entry date 03/07/94]

3/7/94 4 ORDER RE TRANSFER PUR TO G.O. 224 (Related case to CV90-5013 AWT (GHK) by Judge William J. Rea Case reassigned to Judge A. W. Tashima for all further proceedings (cc: all counsel) (es) [Entry date 03/08/94]

3/21/94 5 EX PARTE APPLICATION by respondent George NMI Smith, respondent AGCA to extend ti to fl a return decl of Carol Frederick Jorstad; motion hearing set for <date not set> (bp) [Entry date 03/22/94]

3/21/94 -- LODGED/PROPOSED ORDER (bp) [Entry date 03/22/94]

3/24/94 6 ORDER by Magistrate Judge George H. King granting motion to extend ti to fl a return [5-1] Respondent is given until 5/13/94 to fl a traverse. (bp) [Entry date 03/25/94]

4/12/94 8 EX PARTE APPLICATION to file memo of p/a in excess of 35 pages by respondent George NMI Smith, respondent AGCA (jw) [Entry date 04/18/94]

Docket as of January 16, 1996 11:08 am

Proceedings include all events. TERMED
2:94cv1157 APPEAL
Lee Robbins v. George Smith, et al.

4/12/94 -- LODGED/PROPOSED Order (FWD TO CRD) (jw) [Entry date 04/18/94]

4/13/94 10 ORDER that Crt hereby grants resps lv to file a memo of P/A in excess of 35 pages suppt of the Return to the Pet for Writ of H/C Magistrate Judge George H. King. (suz) [Entry date 04/20/94]

4/15/94 7 RETURN TO PETITION for Writ of H/C; memo of P/A; decl and exhibits in suppt by respondent George NMI Smith, respondent AGCA [1-1] (suz) [Entry date 04/19/94]

5/11/94 11 NOTICE OF MOTION AND MOTION by petitioner Lee NMI Robbins for enlargement of ti to fl a traverse to the return; motion set for <date not set> (bp) [Entry date 05/13/94]

5/11/94 9 LODGED/PROPOSED Order re mtn for enlargement of ti (FWD TO CRD) (we) [Entry date 01/16/96] [Edit date 01/16/96]

5/16/94 12 MINUTES: granting motion for enlargement of ti [11-1] This matter is deemed submitted. Petr's mot is GRANTED. Pet shall have to & including 6/2/94, within which to fl his traverse. Failure to timely fl the traverse shall be deemed petr's consent to dismissal of this actn for failure to

prosecute. by Magistrate Judge George H. King CR: none (bp) [Entry date 05/18/94]

5/16/94 13 NOTICE OF MOTION AND MOTION by petitioner Lee NMI Robbins to enlarge ti to fl a traverse to the return; motion hearing set for <date not set> (bp) [Entry date 05/18/94]

5/27/94 14 TRAVERSE to return to petn for writ of H/C; memo of p's & a's in support: decl & exhibits in support of pet. by petitioner Lee NMI Robbins to [7-1] (bp) [Entry date 06/06/94]

6/2/94 16 NOTICE of typographical error in traverse. by petitioner Lee NMI Robbins (bp) [Entry date 06/08/94]

6/3/94 15 NOTICE of lodging of documents in District Court by respondent George NMI Smith, respondent AGCA (bp) [Entry date 06/06/94]

9/8/94 17 MINUTES: Having reviewed the briefing in this case, the crt deems it in the interest of justice to appoint cnsl to represent petitioner on at least one of the issues raised in the petition. Accordingly, Ronald J. Nessim is hereby appointed to represent petitioner.; mandatory status conference set on 9:00 9/20/94 by Magistrate Judge George H. King CR: none (bp) [Entry date 09/13/94]

9/14/94 18 NOTICE of continuance of MSC; mandatory status conference set on 9:00 9/23/94 (bp) [Entry date 09/15/94]

Docket as of January 16, 1996 11:08 am

Proceedings include all events. TERMED
2:94cv1157 APPEAL
Lee Robbins v. George Smith, et al.

9/23/94 19 MINUTES: Pla's brief shall be fld NLT 12/23/94. Dft's opposition shall be fld 1/23/94. Dft's opp shall be fld NLT 1/23/95. Pla's reply, if any, shall be fld NLT 2/23/95, & oral argument shall be heard at 9:00 a. on 3/7/95. by Discovery Andrew J. Wistrich CR: tape #148 (bp) [Entry date 09/27/94]

12/5/94 20 NOTICE by petitioner Lee NMI Robbins of change of address (bp) [Entry date 12/26/94]

12/21/94 21 STIPULATION and ORDER by Magistrate Judge George H. King; IN COURT HEARING RE: Petitioner Anders claim set on 3/14/95 Petitioner's supplemental brief must be fld on or bef 12/30/94: The states opposition brief, which was formerly to be fld on 1/23/95, must now be fld on or bef 1/30/95: & Petitioner's reply brief, which was formerly to be fld on 2/23/95, must now be fld on or bef 3/2/95. (bp) [Entry date 12/31/94]

12/30/94 22 SUPPLEMENTAL Brief re Habeas petition: declarations of Jerome H. Friedberg & Lee Robbins in support by petitioner Lee NMI Robbins (bp) [Entry date 01/03/95]

1/25/95 23 EX PARTE APPLICATION by respondent George NMI Smith,

respondent AGCA to file memo over 35 pages (dh) [Entry date 02/02/95]

1/25/95 -- LODGED/PROPOSED Order (FWD TO CRD) (dh) [Entry date 02/02/95]

1/26/95 24 ADDENDUM by petitioner Lee NMI Robbins to [22-1] (dh) [Entry date 02/02/95]

1/26/95 26 ORDER by Magistrate Judge George H. King granting application [23-1] lv ti file memo of P/A in excess of 35 pages (sb) [Entry date 02/22/95]

1/30/95 25 SUPPLEMENTAL return; memorandum of points & authorities, exhibits & declaration of David Goodwin in support by respondent George NMI Smith re answer response [7-1] (we) [Entry date 02/02/95]

3/2/95 27 REPLY by petitioner Lee NMI Robbins to supplemental return [25-1] (dh) [Entry date 03/10/95]

3/10/95 28 MINUTES:; IN COURT HEARING cont'd from 3/14/95 to 9:00 4/18/95 by Magistrate Judge George H. King CR: none (jw) [Entry date 03/17/95]

3/28/95 31 NOTICE by Court of hearing; status hearing cont until 9:00 5/2/95 (dh) [Entry date 05/03/95]

Proceedings include all events. TERMED
2:94cv1157 APPEAL
Lee Robbins v. George Smith, et al.

3/31/95 29 REQUEST by respondents to cite new decision in suppt of respndts' suppl return (dh) [Entry date 05/01/95]

4/3/95 32 MINUTES: On 3/31/95, respondents filed a req to cite new decision in suppt of respndts' supplemental return. Petr shl have to & thru 4/17/95 in which to file a resp. by Magistrate Judge George H. King CR: n/a (dh) [Entry date 05/03/95]

4/11/95 30 REPLY by petitioner Lee NMI Robbins re [29-1] (dh) [Entry date 05/01/95]

5/1/95 34 MINTUES: ; resetting status hearing set on 9:30 5/9/95 by Magistrate Judge George H. King CR: N/A (we) [Entry date 05/23/95]

5/9/95 33 MINUTES: Case called. Cnsl make their appearances. Oral argument held with cnsl. Crt ords plf to file fur briefing within 10 days hereof. Dfts to file their brief 10 days thereafter. by Magistrate Judge George H. King CR: Tape #173 & 174 (we) [Entry date 05/22/95]

5/19/95 35 Respondent's post-argument addendum to supplemental return: memo of p'a & a's & exhibit in support: attorney for respondents (bp) [Entry date 06/05/95]

5/26/95 36 REPLY by petitioner Lee NMI Robbins to respondent's post argument addendum to supplemental return [35-1] (we) [Entry date 06/08/95]

7/24/95 37 ORDER TRANSFERRING ACTION UNDER SECTION 3.1 of G.O. 224 by Judge A. W. Tashima Case reassigned to Judge George H. King for all further proceedings, ter terminating case referral to Magistrate Judge George H. King (cc: all ptys) (es) [Entry date 07/31/95]

10/24/95 38 ORDER by Judge George H. King granting habeas corpus petition [1-1], to the extent that petr shl be discharged frm custody on the subj conviction unless the 9th CCA accepts juris over petr's direct app w/i 30 dys, Resp shl notify the 9th CCA of this crts ord. (mm) [Entry date 10/26/95]

10/24/95 39 JUDGMENT: by Judge George H. King. granting habeas corpus petition [1-], to the extent that petr shl be discharged from custody on the subj conviction unless the 9th CCA accepts juris over petr's direct app w/i 30 dys; & Resp's shl notify the 9th CCA of this crts ord. terminating case (ENT 10/26/95) MD JS-6 (cc: all counsel) mm [Entry date 10/26/95]

10/26/95 40 NOTICE OF APPEAL by respondent to 9th C/A from Dist. Court Jgm ent 10/26/95. (cc: Carol Frederick Jorstad; Bird, Marella, Boxer, Wolpert & Metz) Fee: Waived. (pjap)

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Proceedings include all events. TERMED
2:94cv1157 APPEAL
Lee Robbins v. George Smith, et al.

[Edit date 11/01/95]

10/26/95 41 APPLICATION by respondent George NMI Smith for stay; memo of PA in support thereof; decl of Carol Frederick Jorstad in support. (we) [Entry date 11/01/95]

10/26/95 -- LODGED/PROPOSED Order (FWD TO CRD) (we) [Entry date 11/01/95]

10/30/95 42 MINUTES: Petitioner is hereby granted 10 days to file & serve a response, if any, to the respondent's application for stay. by Judge George H. King CR: N/A (we) [Entry date 11/07/95]

11/7/95 43 TRANSCRIPT DESIGNATION and ordering form. (pjap) [Entry date 11/08/95]

11/9/95 44 OPPOSITION by petitioner Lee NMI Robbins to respondent's appl for stay [41-1]; decl of Ronald J Nessim. (we) [Entry date 11/16/95]

11/13/95 45 REPLY by respondent George NMI Smith to petitioner's opposition to respondent's request for stay; decl of Carol Frederick Jorstad. (we) [Entry date 11/17/95]

11/14/95 46 PROPOSED ORDER by Judge George H. King that this crt's ord in the above-entitled case be stayed during the pendency of the appeal before the Ninth Circuit. (we) [Entry date 11/21/95]

11/22/95 47 NOTICE OF APPEAL by petitioner Lee NMI Robbins to 9th C/A from Dist. Court jgn & ord filed 10/24/95. (cc: Bird, Manella, Boxer, Wolpert & Matz, Carol Frederick Jorstad.) Fee: CPC Pending. (dl) [Entry date 11/27/95] [Edit date 12/04/95]

11/22/95 48 NOTIFICATION by Circuit Court of Appellate Docket Number 95-56640 (app) [Entry date 12/01/95]

11/28/95 49 MEMORANDUM by Judge George H. King RE: Fees & costs under the CJA. (we) [Entry date 12/05/95]

12/7/95 50 MEMORANDUM AND ORDER by Judge George H. King denying application for certificate of probable cause. (we) [Entry date 12/19/95]

12/29/95 51 TRANSCRIPT DESIGNATION and ordering form for dates: Tape # 173, 174 CR: Dorothy Babykin (fvap) [Entry date 01/11/96]

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GENERAL DOCKET FOR
Ninth Circuit of Appeals

Court of Appeals Docket #: 95-56640
Filed: 11/21/95
Nsuit: 3530 Habeas corpus (Fed)
Robbins v. Smith
Appeal from: Central District of California,
Los Angeles

- -

Case type information:

1) prisoner petition
2) state
3) habeas corpus

- -

Lower court information:

District: 0973-2 : CV-94-01157-GHK
presiding judge: George H. King, Magistrate
court reporter: Donna Stephenson, CSR
COORDINATOR
Date Filed: 2/24/94
Date order/judgment: 10/24/95
Date NOA filed: 10/26/95

- -

Fee status: paid

- -

Prior cases:
None
Current cases:

	Lead	Member	Start	End
cross appeal:				
	95-56640	96-55063	1/18/96	

Docket as of January 19, 1999 1:04 am

Proceedings include all events.
95-55640 Robbins v. Smith

LEE NMI ROBBINS
Petitioner - Appellee

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[COR LD NTC ret]
Elizabeth A. Newman, Esq.
310/201-2100
23rd Floor
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BIRD, MARELLA,
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-2561

v.

GEORGE NMI SMITH,
Warden,
California Department of
Corrections
Respondent - Appellant

Carol Frederick Jorstad
(213) 897-2000
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ATTORNEY GENERAL'S
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300 South Spring Street
Los Angeles, CA 90013

Docket as of January 19, 1999 1:04 am

Proceedings include all events.
95-56640 Robbins v. Smith

LEE NMI ROBBINS

Petitioner - Appellee

v.

GEORGE NMI SMITH, Warden, California Department of Corrections

Respondent - Appellant

Docket as of January 19, 1999 1:04 am

Proceedings include all events.
95-56640 Robbins v. Smith

11/21/95 DOCKETED CAUSE AND APPEARANCES OF COUNSEL. CADS SENT (Y/N): n. setting schedule as follows: appellant's designation of RT is due 11/6/95 for George NMI Smith; appellees's designation of RT is due 11/15/95; appellant shall order transcript by 11/27/95; court reporter shall file transcript in DC by 12/26/95; certificate of record shall be filed by 1/2/96; appellant's opening brief is due 2/12/96; appellees' brief is due 3/12/96; appellants' reply brief is due 3/26/96; [95-56640] (jhc) [95-56640]

11/21/95 Filed certificate of record on appeal RT filed in DC N.T. [95-56640] (jhc) [95-56640]

1/5/96 Filed Aplt's request for certificate of probable cause; declaration of Elizabeth A. Newman with exhibits in support; served on 1/4/96 (Moatt) [2931816] [95-56640] (gva) [95-56640]

1/26/96 Filed MOATT order (Cynthia H. HALL, Melvin BRUNETTI,): To the extent a cpc is necessary, Lee Robbins' request for cpc in cross-appeal no. 96-55063 is granted.... The dc grant of ifp statu adn appt of csl for Robbins shall continue on appeal... The clk shall change this ct's docket to so reflect. The following briefing schedule shall govern cross-appeal nos. 95-56640 & 96-55063: the state's opening brief and excerpts of record are due

2/12/96; Robbins' ans/opening brief is due 3/22/96; the state's ans/reply brief is due 4/22/96; Robbins' optional reply brief is due 14 days after service of the state's ans/reply brief. [95-56640, 96-55063] (tsp) [95-56640] 96-55063]

1/29/96 Filed certified record on appeal in 4 Vols. (total): 4 Clerks Rec (Orig) [96-55063, 95-56640] [96-55063, 95-56640] (wp) [95-56640 96-55063]

1/31/96 Received from DC copies that comprise the excerpts of record. (RECORDS) [96-55063, 95-56640] (rf) [95-56640 96-55063]

2/5/96 14 day oral extension by phone to file George NMI Smith in 95-56640, George Smith in 96-55063's cross-appeal brief. [95-56640, 96-55063] first cross-appeal brief due 2/26/96 in 95-56640, in 96-55063; second cross-appeal brief due 4/8/96 in 95-56640, in 96-55063; third cross-appeal brief due 5/8/96 in 95-56640, in 96-55063; optional reply brief due 14 days from service of the answering brief (cb) [95-56640 96-55063]

2/28/96 Filed original and 15 copies aplt/x-aple George NMI Smith's first brief on cross-appeal, (Informal: n) of 54 pages and 5 excerpts of record in 1 vol.; served on 2/26/96 [95-56640, 96-55063] (hh) [95-56640 96-55063]

Docket as of January 19, 1999 1:04 am

Proceedings include all events.
95-56640 Robbins v. Smith

3/4/96 Filed (Promo) motion & clerk order: (Deputy: cag) The request for judicial notice and any responsive filings shall be referred to the merits panel for disposition. (mtn rcvd 2/28/96) ... [2961636-1] [95-56640, 96-55063] (gva) [95-56640 96-55063]

4/2/96 14 day oral extension by phone to file Appellee in 95-56640, Appellant in 96-55063's cross-appeal brief. [95-56640, 96-55063] second cross-appeal brief due 4/22/96 in 95-56640, in 96-55063; third cross-appeal brief due 5/22/96 in 95-56640, in 96-55063; optional reply brief due 14 days from service of the third brief (cb) [95-56640 96-55063]

4/23/96 Filed original and 15 copies Lee NMI Robbins second brief on cross-appeal (Informal: n) of 68 pages/13,868 words and 5 excerpts of record in 2 vols., served on 4/22/96 [95-56640, 96-55063] (rei) [95-56640 96-55063]

4/23/96 Filed Lee Robbins' opposition to request for judicial ntc, served on 4/22/96. (RECORDS FOR MERITS PANEL) [2961636-1] [95-56640, 96-55063] (rc) [95-56640 96-55063]

5/17/96 14 day oral extension by phone to file George NMI Smith in 95-56640, George Smith in 96-55063's cross-appeal reply/answering brief. [95-56640, 96-55063] third cross-appeal brief

due 6/5/96; x-appeal reply brief due 14 days... (jlc) [95-56640 96-55063]

6/5/96 Filed original and 15 copies aplt/x-aple George NMI Smith's third brief on cross-appeal (Informal: no) of 36 pages (minor defcy: brief has gray covers instead of red); served on 6/3/96 [95-56640, 96-55063] (gail) [95-56640 96-55063]

6/5/96 Filed res/aplts-x-aples (Smith, et al.) reply to the opposition to the request for judicial ntc; served on 6/3/96. (RECORDS for MERITS PANEL). [2961636-1] [95-56640, 96-55063] (rc) [95-56640 96-55063]

6/13/96 14 day oral extension by phone to file Lee NMI Robbins in 95-56640, Lee Robbins in 96-55063's cross-appeal brief. [95-56640, 96-55063] cross-appeal reply brief due 7/5/96 in 95-56640, in 96-55063; (cb) [95-56640 96-55063]

6/17/96 Rcvd Aplt/x-aples' (George NMI Smith) satisfaction of minor dfcy (15 red covers for third x-appeal brief) [95-56640, 96-55063] (gail) [95-56640 96-55063]

7/8/96 Filed original and 15 copies aple/x-aplt Lee NMI Robbins' reply brief of 29-pgs with cert of compliance (Informal: no); served on 7/5/96 [95-56640, 96-55063] (gail) [95-56640 96-55063]

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Proceedings include all events.
95-56640 Robbins v. Smith

7/15/96 Filed certificate of record on appeal RT filed in DC 3/7/96 [95-56640] (rmw) [95-56640]

7/15/96 Calendar check performed [95-56640, 96-55063] (mw) [95-56640 96-55063]

8/6/96 Calendar materials being prepared. [95-56640, 96-55063] [95-56640, 96-55063] (mw) [95-56640 96-55063]

8/9/96 CALENDARED: PASA Oct 8 1996 9:00 am Courtroom 1 [95-56640, 96-55063] (aw) [95-56640 96-55063]

10/7/96 Filed aple/x-aplt Lee Robbins' additional citations, served on 10/7/96 (faxed to PAS for panel) [95-56640, 96-55063] (hh) [95-56640 96-55063]

10/8/96 ARGUED AND SUBMITTED TO Procter R. HUG, Harry PREGERSON, Stephen R. REINHARDT [95-56640, 96-55063] (rmw) [95-56640 96-55063]

10/11/96 Filed aple/x-aplt Lee NMI Robbins' additional citations, dated 10/7/96 (to PANEL) [95-56640, 96-55063] (hh) [95-56640 96-55063]

9/23/97 FILED OPINION: AFFIRMED IN PART but the case is REMANDED (Terminated on the Merits after Oral Hearing; Affirmed; Written, Signed, Published. Procter R. HUG, author; Harry PREGERSON; Stephen R. REINHARDT.) FILED AND ENTERED JUDGMENT. [95-56640, 96-55063] (sf) [95-56640 96-55063]

10/15/97 Filed original and 40 copies Appellant George NMI Smith Appellant Lee Robbins petition for rehearing with suggestion for rehearing en banc. (PANEL AND ALL ACTIVE JUDGES) 21 p.pages, served on 10/6/97 [95-56640, 96-55063] (sf) [95-56640 96-55063]

8/13/98 Filed amended opinion (Judges Procter R. HUG, Harry PREGERSON, Stephen R. REINHARDT) (Orig. opinion id:) [95-56640, 96-55063] (sf) [95-56640 96-55063]

8/21/98 Filed aplt's/x-aple's (Smith) mtn for clarification and for a stay of the mandate and for leave to file a supp'l rehearing petition; served on 8/19/98. (PANEL) [95-56640, 96-55063] [95-56640, 96-55063] (rc) [95-56640 96-55063]

9/24/98 Filed order (Procter R. HUG, Harry PREGERSON, Stephen R. REINHARDT): The panel has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc. (SEE TEXT) The petition for rehearing is DENIED and the suggestion for rehearing en banc is REJECTED. The motion for clarification and for a stay of the mandate and for leave to file a supplemental

rehearing petition is DENIED. in 95-56640, 96-55063 [95-56640, 96-55063] (sf) [95-56640 96-55063]

Docket as of January 19, 1999 1:04 am

Proceedings include all events.
95-56640 Robbins v. Smith

10/6/98 Received Appellee Lee NMI Robbins "FAXED" letter dated 10/5/98 re: aple is preparing to submit an opposition to the state's motion. (LETTER IS MOOT ORDER WAS FILED 9.24.98) [95-56640, 96-55063] (sf) [95-56640 96-55063]

10/6/98 Filed Appellee Lee NMI Robbins response opposition to Smith's cross-appeal motion to stay the mandate. served on 10/5/98 (MOTION IS MOOT) [95-56640, 96-55063] (sf) [95-56640 96-55063]

10/6/98 Rec'd notice of change of address from Elizabeth A. Newman for Appellee Lee NMI Robbins dated 10/5/98. (CASEFILE) [95-56640, 96-55063] (sf) [95-56640 96-55063]

10/19/98 Filed FAXED copy of aplt/x-aple's (Smith) mtn to stay mandate pending petition for cert; served on 9/28/98. (Never recvd document when it was originally sent) (FAXED to PRH) [95-56640, 96-55063] [95-56640, 96-55063] (rc) [95-56640 96-55063]

10/19/98 Filed aple/x-aplt's (ROBBINS) opposition to stay mandate; served on 10/5/98. [3547336-1] (Note: this document was original filed on 10/6/98 before we recvd the mtn to stay mandate) (FAXED TO PRH) [95-56640, 96-55063] (rc) [95-56640 96-55063]

10/26/98 Filed order (Procter R. HUG,): The "Motion to Stay the Mandate to Permit Respondent to File a Petition for Writ of Certiorari" is GRANTED. in 95-56640, 96-55063 [95-56640, 96-55063] (ft) [95-56640 96-55063]

11/25/98 Filed aplt/cross-aple Smith's mtn to extend stay of mandate (faxed to PRH) [95-56640, 96-55063], served on 11/23/98 [95-56640, 96-55063 (db) [95-56640 96-55063]

12/2/98 Filed order (Procter R. HUG): The motion to extend the stay of mandate an additional 30 days is granted. in 95-56640, 96-55063 [95-56640, 96-55063] (sf) [95-56640 96-55063]

1/7/99 Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 98-1037 filed on 12/17/98 and placed on the docket 12/2/9/98.. [95-56640, 96-55063] (rc) [95-56640 96-55063]

Docket as of January 19 1999 1:04 am

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	2d Crim. No. B054733
	)	Superior Court
Plaintiff and Respondent,	)	No. A 481636
	)	
vs.	)	
	)	
LEE ROBBINS,	)	
	)	
Defendant and Appellant,	)	
	)	

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE ROBERT W. ARMSTRONG, JUDGE PRESIDING

APPELLANT'S OPENING BRIEF

REQUEST FOR INDEPENDENT REVIEW OF RECORD PURSUANT TO
PEOPLE v. WENDE (1979) 25 Cal. 3d 436

David H. Goodwin
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Attorney for Appellant

STATEMENT OF THE CASE

This is an appeal pursuant to Penal Code Section 1237 from a judgment of conviction of violation of one count each of Penal Code Section 187(a)[1] (murder) and 487(3) (Grand theft of an automobile).

Appellant was charged by information with one count of violation of Section 187(a) and one count of Section 487(3). It was further alleged that in the commission of the murder appellant personally used a firearm within the meaning of Sections 1203.06(a)(1) and 12022.5 (CT 106-107).

On December 19, 1989, appellant was arraigned in the Superior Court for the County of Los Angeles, Department SE J, before the Honorable J. A. Torribio. At that time Appellant entered a plea of not guilty (CT 108).

On December 20, 1989, Judge Torribio suspended proceeding pending a determination of appellant's competency pursuant to § 1368 (CT 109).

On March 1, 1990, the Honorable C. Robert Simpson, presiding in Department SE J, found appellant competent to stand trial, and proceedings were resumed. On that date the court also denied appellant's motion pursuant to People v. Marsden (1970) 2 Cal.3d 118 (CT 143).

On March 7, 1990, Judge Simpson denied another Marsden motion, and granted appellant's request to proceed in propria persona (CT 144).

On August 17, 1990, the cause was called to trial before the Honorable R. Armstrong, presiding in the Superior Court for the County of Los Angeles, Department SE F (CT 200).

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1. All further undesignated statutory references are to the Penal Code.

On August 22, 1990, the jury returned a verdict of guilty of one count second degree murder and one count of grand theft of an automobile. It was further found that in the commission of the murder appellant personally used a firearm within the meaning of Sections 12022.5(a) and 1203.06(a)(1) (CT 248-251).

On September 5, 1990, Judge Armstrong sentenced appellant as follows: For Count 1, a sentence of fifteen years to life imprisonment, plus 2 years pursuant to Section 12022.5 for a total of seventeen years to life. For Count 2, the mid term sentence of two years imprisonment, to be served consecutively to the sentence imposed for Count 1. However, the sentence for Count 2 was stayed, that stay to become permanent pending the completion of the sentence for count 1. Appellant was given credit for 658 days (CT 251-252).

On September 6, 1990, a Notice of Appeal was filed bringing this case before this Court (C.T. 253-254).

STATEMENT OF THE FACTS

Alvin York Curtis, lived next door to Spaulding (the decedent in this case) during the summer of 1988[2]. During that summer, appellant was living in the converted garage of Spaulding's residence (RT 75-76, 91). At about 6:30 p.m. on December 31, 1989, Mr. Curtis heard two sets of gunshots, separated from each other by a pause of a couple seconds. Each set consisting of several shots, and each set sounding distinct from the other (RT 76-78). At that time Mr. Curtis thought that the sounds were gunshots from New Year's Eve revelers (RT 78-79).

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2. Unless otherwise indicated all events referred to herein occurred on December 31, 1988.

Spaulding had frequent arguments with his wife, and at one time he was arrested for assaulting her. (RT 81, 89-90).

Dona Medina, another neighbor of the victim, also heard gunshots at that time, and described them as having two distinct sounds, the first three having a sharp sound, and the next four or five shots having a more muffled sound. (RT (84-85).

Mrs. Medina knew of one occasion where a woman claimed that Spaulding had beaten her because she would not sleep with him (RT 89). Mrs. Medina also testified that on one occasion Spaulding's house was vandalized, and Spaulding then made a phone call from her house, telling the person he called that he knew that "Lee" had been the one who vandalized his house (RT 89).

Maria Romero, another neighbor of Spaulding heard the shots (RT 95). Shortly after hearing the shots she saw a man standing in front of her house. The person told her that he was looking for his dog who ran away after being scared by fireworks (RT 96-98).

Mrs. Romero and her daughter then went to the Fayva shoe store where they purchased some shoes. The receipt from the shoe store indicated the time of purchase as 6:47 p.m. (RT 98, 100). Mrs. Romero was unable to identify the man who was looking for the dog, although she described him to the police as being five feet six inches to five feet eight inches, 25 to 30 years old, and having dark short curly hair (RT 102, 104-105).

Stanley Curatola, Spaulding's roommate, testified that he left their residence on New Year's Eve before noon (RT 110-111), and spent the day with a variety of friends at various bars and restaurants. He returned to his residence, along with some of his friends from the bars, at about 8:00 (RT 111-114). Returning home he found that a rear window had been broken. Opening the curtain to the window he saw Spaulding

lying on his face on the floor in a pool of blood (RT 114-116). Spaulding's gun was on the floor next to him. Curatola told his friend to call the police, and waited outside until they arrive (RT 117).

Curatola testified that he knew that Spaulding had been having an ongoing dispute with another roommate, whom Curatola eventually discovered to be appellant. (RT 118, 120)

Arriving at the Spaulding residence at about 11:00 p.m., Deputy Sheriff Cox observed a Smith and Wesson .38 caliber revolver (People's Exhibit 9) with five expended rounds lying next to Spaulding's body (RT 170, 172-173, 176). Bullet holes were observed in the door to the service porch, going from the inside of the residence to the outside, and the window on that door had been shattered (RT 173-174).

When Deputy Cox interviewed appellant after his arrest, appellant admitted being in the area of the Spaulding residence around dusk on December 31, 1988 (RT 180). In that statement appellant stated that he was on his way home when he stopped to let his dog relieve itself. He lost sight of the dog, and had asked a "Mexican couple" at the corner of Claretta and Gradwell if they had seen it. He later found the dog in a parking lot across the street (RT 180-181).

Richard Lee, appellant's brother-in-law testified that in December of 1988, appellant was living in a trailer in the backyard of Lee's residence (RT 125). Some time in mid December, Mr. Lee asked appellant to stay at another property he owned in Santa Fe Springs, and watch that property for Lee, but that appellant had returned to Mr. Lee's residence on at least one occasion in January of 1989, and that appellant would have had access to Mr. Lee's garage (RT 125-126, 141-142).

As part of a firearm collection, Mr. Lee owned a .45 caliber Colt Commander automatic pistol

(People's Exhibit 3). That weapon was normally kept in a gun safe in his garage. (RT 126-128).

Lee testified that appellant had access to the garage. Although the gun safe was usually locked, Mr. Lee kept the lock set so that he only had to roll the combination to zero so that he had easy access to the safe. Mr. Lee was sure that appellant had seen him open the safe in that manner (RT 128-129).

Some time in mid December this gun disappeared from Mr. Lee's possession. It later reappeared in mid January. Mr. Lee did not know where the weapon was during this time (RT 129, 143).

Mr. Lee testified that another gun had also disappeared from his collection in late November or early December, when he had taken it to a gun shop in Riverside, accompanied by appellant, to have some work done on the gun. (RT 129-131)

Mr. Lee further testified that he had loaned appellant People's Exhibit 3 earlier in October of 1988, and appellant had returned the gun on November (RT 132-133).

Mr. Lee testified that when the police initially visited him in January of 1989 he had lied to them, telling them that he only had one .45 automatic, when, in fact, he had five. Mr. Lee had taken the weapons to his father's house, where he had left them for a month or two, because he was concerned that if the police took the weapons they would not return them (RT 133-134).

Mr. Lee further testified that the police visited him again in October of 1989, and at that time he admitted that he lied earlier. He also gave them several .45 automatics, including People's Exhibit number 3. At the time that he handed over People's Exhibit number 3, it had an electron sight on it that had been put on the gun after he had retrieved it from his father's house (RT 134-136).

Mr. Lee testified that on January 10, 1989, appellant had asked him if he had been interviewed by the police. He told Robbins not to let the police have the gun, because he was afraid that the police would dummy up ballistics tests and frame him for Spaulding's murder (RT 145-146).

At that time appellant asked Lee for a vehicle. Lee offered to let appellant use a Blazer that was at Lee house. Lee and appellant went to Lee's place of work in a truck that Lee was borrowing from his father. Lee left the keys to that truck of his office desk, and later discovered that the keys, the truck and appellant were missing (RT 146-148).

Some time later the truck was discovered in Arizona near the New Mexico border. Lee had not give appellant permission to take the truck (RT 148-149).

On January 7, 1989, Deputy Cox spoke to Lee and requested permission to search the trailer on Lee's property that appellant had been staying in. (RT 186-187). On January 12th, Cox again went to Lee's residence where he searched the garage (RT 192).

On October 3, 1989, Cox again spoke to Lee, and Lee informed Cox that he had been lying to Cox about the number of guns that he had. Lee then handed over all his .45s to Cox, and Cox had the weapons test fired. He returned all of the weapons to Lee, and after the test results were complete he re-obtained People's Exhibit 3 (RT 195-197).

Deputy Cox further testified that the police had removed a piece of carpeting from the Spaulding residence because they had initially thought that it was blood stained. However, that carpeting was destroyed when tests determined that the stain was not blood (RT 205-206).

He testified that because of the possibility that the stain on the carpet may have been blood and the fact that one weapon had apparently been fired from

inside the house to the outside, the initial bulletin that they had issued mentioned that the suspect might have been wounded (RT 206-207).

It was stipulated that appellant had never received any gunshot wounds (RT 223-224)

Dr. Sara Reddy, a deputy medical examiner for the Los Angeles County coroner's office, performed the autopsy on Spaulding. She determined that Spaulding had been shot five times, and gave multiple gunshot wounds as the cause of death (RT 219). She testified that death would have been "very quick" (RT 221).

On the afternoon of December 31, 1988, appellant was visiting Pat Cano in Hawaiian Gardens (RT 228-229, 269-270). At that time he showed Vincent Nylin, Cano's boyfriend, a .45 Colt commander and a TEC-9 nine-millimeter revolver (RT 237-239).

Deputy Van Horn of the scientific Services Bureau, recovered a .38 caliber Smith and Wesson revolver, several expended .45 Caliber cartridge cases, and bullets from a .45 caliber and a. 38 caliber gun (RT 242-243).

The .45 caliber cartridge casings were found outside the side door to the residence (RT 246). Two .45 caliber bullets were recovered from the rear wall (RT 247-248). Four .38 caliber bullets were found in the area around the rear door (RT 249).

After testing the weapons involved, Deputy Van Horn concluded that the .38 caliber bullets found were fired from the Smith and Wesson recovered at the scene. He further found that the .45 caliber bullets recovered from the scene and the bullets given to him by the Coroner's office were all fired from People's Exhibit Number 3 (RT 254, 256-257).

In Deputy Van Horn's opinion, the bullets from the .45 caliber were fired from outside the house

to the inside, while the bullets from the .38 caliber were fired from the inside to the outside (RT 264).

ARGUMENT

APPELLANT REQUESTS THAT THIS COURT INDEPENDENTLY EXAMINE THE ENTIRE RECORD ON APPEAL

Pursuant to People v. Wende (1979) 25 Cal. 3d 436, counsel requests that this court independently review the entire record on appeal for arguable issues.

Present counsel has advised appellant that appellant may file a supplemental brief with the court within 30 days and may request the court to relieve present counsel. Present counsel remains available to brief any issues(s) upon invitation of the court. (See Declaration attached hereto.)

DATED: October 1, 1991 Respectfully submitted,

David H. Goodwin
Attorney for Appellant

DECLARATION OF DAVID H. GOODWIN IN SUPPORT OF REQUEST FOR INDEPENDENT JUDICIAL REVIEW OF THE ENTIRE APPELLATE RECORD

I, David H. Goodwin, declare as follows:

I am the attorney appointed to represent appellant, Lee Robbins, in his appeal following judgment of conviction for violation of Penal Code §§ 187(a) and 487(3).

I have reviewed the entire record on appeal, consisting of the Clerk's Transcript (1 volume), the Reporter's Transcript (1 volume), and the Augmented Reporter's Transcripts (1 volume); examined the superior court file and exhibits from appellant's trial; and discussed appellant's case with trial counsel.

I have written to appellant at his current address, Lee Robbins, E-69926, 1-1A-30, P.O. Box W, Repressa, Ca 95671, explaining my evaluation of the record on appeal and my intention to file this pleading. I have also informed him of his right to file a supplemental brief. I have sent appellant the transcripts of the record on appeal and a copy of this brief.

I do not at this time move to withdraw as counsel of record for appellant and I remain available to brief any issues that the Court requests. I have also advised appellant that he may request this court to relieve me.

I declare under penalty of perjury that the foregoing is true and correct and that I signed this declaration on October 1, 1991, at Los Angeles, California.

David H. Goodwin

PROOF OF SERVICE BY MAIL (C.C.P. SEC. 1013.A, 2015.5)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a resident of the aforesaid county; I am over the age of eighteen years and not a party to the within entitled action; my business address is

P. O. Box 93579, Los Angeles, Ca 90093-0579

On October 1, 1989 I served the within Statement by Counsel on Appeal Pursuant to People v. Wende on the interested parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as follows:

The Attorney General
300 South Spring St.
Room 500
Los Angeles, Ca 90013

Hon. Robert W. Armstrong
Superior Court, Dept. SE F
12720 Norwalk Blvd.,
Norwalk, Ca 90650

District Attorney's Office
12720 Norwalk Blvd., Room 201
Norwalk, Ca 90650

Lee Robbins, E-69926
1-1A-30
P.O. Box W
Repressa, Ca 95671

Executed on October 1, 1991, at Los Angeles, California I declare under penalty of perjury that the foregoing is true and correct.

DAVID H. GOODWIN

COURT OF APPEAL - SECOND DIST.
FILED
DECEMBER 12, 1991
ROBERT N. WILSON, CLERK

NOT FOR PUBLICATION IN
THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,	)	No. B054733
	)	
Plaintiff and Respondent,	)	(Super.Ct.No. A481636)
	)	
v.	)	
	)	
LEE ROBBINS,	)	
	)	
Defendant and Appellant.	)	
	)	

APPEAL from a judgment of the Superior Court of Los Angeles County. Robert W. Armstrong, Judge. Affirmed.

David H. Goodwin, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance on behalf of the People, Plaintiff and Respondent.

Lee Robbins appeals from the judgment entered following a jury trial that resulted in his conviction of second degree murder with the use of a firearm and grand theft of an automobile. (Pen. Code,

§§ 187, 487, subd. 3, 12022.5, subd. (a).) He was sentenced to 17 years to life in state prison. We appointed counsel to represent him on this appeal.

After examination of the record, counsel filed an "Opening Brief" in which no issues were raised. On October 28, 1991, we advised appellant that he had 30 days within which to personally submit any contentions or issues which he wished us to consider. In a six-page handwritten document filed November 15, 1991, appellant claims that the evidence is insufficient to support his conviction and he was denied due process by the People's suppression of exculpatory evidence. These claims find no support in the record.

We have examined the entire record and are satisfied that appellant's attorney has fully complied with his responsibilities and that no arguable issues exist. (People v. Wende (1979) 25 Cal.3d 436, 441.)

The judgment is affirmed.

NOT FOR PUBLICATION IN
THE OFFICIAL REPORTS

COOPER, J.*

We concur:

WOODS (Arleigh), P.J. EPSTEIN, J.

*Assigned by the Chairperson of the Judicial Council.

Second Appellate District, Division Four, No. B069441
S028833

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

IN BANK

LEE ROBBINS, Petitioner

v.

LOS ANGELES COUNTY SUPERIOR COURT, Respondent
THE PEOPLE, Real Party In Interest

Petition for review DENIED.

GEORGE

Acting Chief Justice

SUPREME COURT
FILED
SEPTEMBER 29, 1993
ROBERT WANDRUFF CLERK
DEPUTY

ORDER DENYING WRIT OF HABEAS CORPUS

No. S033312

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

IN BANK

IN RE LEE ROBBINS

ON

HABEAS CORPUS

Petition for writ of habeas corpus DENIED on the merits.

LUCAS
Chief Justice

SUPREME COURT
FILED
JANUARY 26, 1994
ROBERT WANDRUFF CLERK
DEPUTY

ORDER DENYING WRIT OF HABEAS CORPUS

No. S036062

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

IN BANK

IN RE LEE ROBBINS

ON

HABEAS CORPUS

Petition for writ of habeas corpus DENIED. (See In re Dixon (1953) 41 Cal.2d 756, 759.)

LUCAS
Chief Justice

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Declaration of David Goodwin

I, David Goodwin, hereby declare as follows:

1. I am a attorney licensed to practice law in California.
2. I was the appointed attorney in People v. Robbins, Court of Appeal No. B054733.
3. It has been 39 months since I filed the brief in this matter, and I do not recall all of the specifics. However, to the best of my recollection, appellant pointed out many issues to me. I attempted to consider most of the issues he mentioned. As to some, I thought they were not meritorious on their face. As to the others that I attempted to research I thought they were not meritorious.
4. Prior to the filing a brief, I filed with consulted with California Appellate Project, and received their permission to file a Wende brief.

I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct.

Executed: (Date illegible)

_____

David H. Goodwin

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LEE ROBBINS, Petitioner, vs. GEORGE SMITH, WARDEN, et al. Respondents.	)	No. CV 94-1157-GHK

Pursuant to the Memorandum and Order of the court, IT IS HEREBY ADJUDGED as follows:

(1) the petition for writ of habeas corpus is GRANTED, to the extent that petitioner shall be discharged from custody on the subject conviction unless the California Court of Appeal accepts jurisdiction over petitioner's direct appeal within thirty (30) days; and

(2) respondents shall notify the California Court of Appeal of this court's order.

DATED: This 24th day of October, 1995.

GEORGE H. KING
United States District Judge

FILED
CLERK, U.S. DISTRICT COURT
OCTOBER 24, 1995
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LEE ROBBINS,	)	NO. CV 94-1157-GHK
	)	
Petitioner,	)	
	)	MEMORANDUM AND ORDER
vs.	)	
	)	
GEORGE SMITH, WARDEN, et al.	)	
	)	
Respondents.	)	

Petitioner, a state prisoner, was convicted of second degree murder and grand theft auto. On February 24, 1994, he filed a petition for writ of habeas corpus with this court. We appointed counsel to represent petitioner, ordered supplemental briefing, and held oral argument on May 9, 1995.

Although petitioner asserts several claims, we reach only the claim of ineffective assistance of appellate counsel. Because we grant this petition on that ground, and this matter is returned to the state courts with instructions that petitioner be granted a direct appeal with new appellate counsel, we do not reach the merits of any of the other alleged errors, even though petitioner has exhausted his state remedies as to those other contentions. See Sherwood v. Tomkins, 716

F.2d 632, 634 (9th Cir. 1983) (potential reversal of petitioner's conviction on state appeal mooting federal claim renders petition premature and subject to dismissal for failure to exhaust state remedies).

DISCUSSION

Petitioner claims he was denied effective assistance of counsel because his appellate attorney did not prepare a proper appellate brief. (Pet., Mem. at 82-88; Traverse at 5-55). Petitioner's attorney submitted a "Wende" brief in which he summarized the facts of the case, but did not raise any specific issues. See People v. Wende, 25 Cal. 3d 436, 436, 158 Cal. Rptr. 839 (1979). Further, the attorney asked the California Court of Appeal to independently review the record. The attorney did not withdraw from the case, but informed the court that he remained available to brief any issue upon invitation of the court. (Traverse, ex. T-4).

Thereafter, the California Court of Appeal ordered petitioner to raise any appealable issues in his own brief. (Return, ex. 3 at 62). Petitioner filed a document claiming that the evidence was insufficient to support his conviction and that the prosecution had suppressed exculpatory evidence. Id. The Court of Appeal reviewed the record, found no arguable issues, and affirmed the judgment. Id.

In Anders v. California, 386 U.S. 738, 738 (1967), the Supreme Court considered the scope of appellate counsel's duty under the Sixth Amendment when such counsel determines that an appeal is without merit. The Court held that if the attorney believes the appeal is frivolous, he or she may request to withdraw. Id. at 744. The request, however, must be accompanied by a brief referring to anything in the record that might arguably support an appeal. Id.

The Anders requirements are designed to assure that a defendant's right to counsel are not violated. McCoy v. Court of Appeals, 486 U.S. 429, 442 (1988). The reviewing court must satisfy itself that the attorney diligently and thoroughly searched the record for arguable claims, and then must determine whether the attorney correctly concluded that the appeal lacked merit. Penson v. Ohio, 488 U.S. 75, 81-82 (1988); McCoy, 486 U.S. at 442. In the Ninth Circuit, a proper Anders brief should identify the arguable issues and include a legal and factual analysis, rather than a simple recitation of the facts. See United States v. Griffy, 895 F.2d 561, 563 (9th Cir. 1990). If arguable issues exist, failure to present them to the court in counsel's brief violates the constitutional requirements of Anders. See id. at 562. Indeed, at oral argument held on May 9, 1995, respondents conceded that if any arguable issues existed which could have and should have been, but were not, raised, there are "serious problems" and prejudice is presumed.[1/] Because we find there are arguable issues which counsel failed to raise and brief, we conclude that petitioner's appellate counsel was ineffective due to his failure to meet the Anders standards.[2/]

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1. Respondents, of course, contend no arguable issues exist in this case.

2. The court further finds that respondents' argument under Teague v. Lane, 489 U.S. 288 (1989), is without merit. Teague holds that a new rule of criminal procedure cannot be retroactively applied in a habeas proceeding, unless the new rule falls into one of two narrow exceptions. Teague does not apply to new substantive rules. Chambers v. United States, 22 F.3d 939, 942-43 (9th Cir. 1994), vacated on other grounds, 47 F.3d 1015 (9th Cir. 1995).

"A new rule for Teague purposes is one where the result was not dictated . . . at the time the defendant's conviction became final . . . .The question is whether a state court considering the defendant's claim at the time his conviction became final would have

We recognize that the California Court of Appeal reviewed the record and found no issues of merit. We, however, are not bound by that determination. The existence or absence of non-frivolous issues on the record is a mixed question of law and fact which is reviewed de novo on a petition for writ of habeas corpus. See Sumner v. Mata, 455 U.S. 591, 597-98 (1982), vacated on other grounds, 464 U.S. 957 (1983). More importantly, our disagreement with the California Court of Appeal is not disrespectful because that court's determination was hampered by the inadequate brief prepared by counsel. Indeed, the reasoning behind the Anders rule is to ensure that counsel actually conducted a thorough review of the record. But, the California Court of Appeal was denied the opportunity to make such a determination with the aid of ready references to the record and legal authorities cited by counsel. Therefore, we review the record de novo for arguable issues.

An appeal as a matter of law is frivolous where none of the legal points are arguable on their merits. Neitzke v. Williams, 490 U.S. 319, 325 (1989) (citing Anders v. California, 386 U.S. 738, 744 (1967)). The parties are not in disagreement that for present purposes we can use the standard of an "arguable" issue as set forth in People v. Johnson, 123 Cal. App. 3d 106, 111-12, 176 Cal. Rptr. 390 (1981), cert. denied, 457 U.S.

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felt compelled by existing precedent to conclude that the rule [he] seeks was required by the Constitution." Goeke v. Branch, 115 S. Ct. 1275, 1277 (1995) [internal quotations and citations omitted].

In the instant case, the rule being applied in petitioner's case is substantive, not procedural. Even if the issue is deemed to be procedural, Anders clearly sets forth what appellate counsel and the appellate court must do. Further, this court is only applying the settled law of Anders, not an extension or modification thereof, and the standards therein as required before petitioner's state conviction became final.

1108 (1982). To be "arguable," an issue must be one which, in counsel's professional opinion, is meritorious.[3] Id., 123 Cal. App. 3d at 109, 176 Cal. Rptr. at 391. Also, if the issue is successful on appeal and is resolved favorably to the appellant, the result must reverse or modify the judgment.[4] Id.

We need not identify each issue that might be arguable. Nor do we mean to suggest that only the issues discussed below are arguable. But, for present purposes, to see whether Anders was violated and prejudice presumed, we discuss only the following two examples which should have been, but were not, presented in petitioner's appellate brief. Moreover, we do not purport to resolve the merits of any of these issues nor intimate that they will necessarily result in success on appeal, as that is not the appropriate standard of review on this habeas petition.

I. Adequacy of the Law Library

The right guaranteed by the Fourteenth and Sixth Amendments to waive one's right to counsel and proceed in pro per "is premised upon the right of the defendant to make a defense." Milton v. Morris, 767

3. Although respondents say there is no such thing as an arguable but non-meritorious claim, we find it is essentially a matter of semantics. Viewing an issue from counsel's ability to argue it in good faith with some potential for prevailing is not to say that it will necessarily achieve success. No one is suggesting that only issues which ultimately prevail are arguable. Rather, all that is required is that an issue has a reasonable potential for success.

4. Because we do not purport to decide the merits of any arguable issues, we also defer to the state appellate court to decide the merits of this second prong. We are satisfied for present purposes that at least some of the arguable issues, if they were decided in petitioner's favor, would have the effect of ultimately affecting the result of his appeal.

F.2d 1443, 1445-46 (9th Cir. 1985) (citing Faretta v. California, 422 U.S. 806, 819-20 (1975)). An incarcerated defendant cannot meaningfully exercise this right without access to tools such as law books. Id. at 1446; Taylor v. List, 880 F.d (sic) 1040, 1047 (9th Cir. 1989) (same).

The state trial judge was aware of the problems that petitioner was going to encounter with the law library. Indeed, the court warned petitioner, "if you are looking up law, you are not going to be able to find it because somebody has torn it out before you got there." (Aug. RT 19).[5] The court further told petitioner, "it's going to be a real mess for you. You are going to regret this for a long time . . . [because of] your fellow prisoners down in the county jail who have virtually destroyed the law library." (Aug. RT 20). Moreover, the court commented, "it's almost impossible as a pro per to prepare yourself a descent [sic] defense, especially given the law library." (Aug. RT 21).

It is true that the court may not have known exactly what materials petitioner would search out in the law library. In murder cases, however, there are common issues that a defendant will need to research, and by exercising his right to proceed in pro per, petitioner was not required to subject himself to the possibility that, through circumstances wholly beyond his control, he would be unable to prepare his defense. Milton, 767 F.2d at 1445.

Given this state of the record, we conclude that petitioner's inability to prepare an adequate defense was at least an arguable issue. Moreover, the "brief" filed by petitioner's appellate counsel did not

5. "RT" refers to the Reporter's Transcript.

even mention these circumstances in the purported recitation of the facts.[6]

II. Counsel

A. Advisory Counsel

Petitioner claims that he attempted to withdraw his waiver of counsel and request advisory counsel, or in the alternative, counsel. (Pet., Mem. at 38, 41).

On August 9, 1990, petitioner stated to the court, "I would like to have the assistance of counsel at the trial. I am not real good at public speaking. I am doing okay as far as the law work and stuff. Obviously, I am not a lawyer, but I need somebody to help me present the case." (Pet., ex. E, transcript dated Aug. 9, 1990, at 23). He further stated, "I do need some help presenting the evidence at the trial. I know the court is aware of the recent case laws in reference to appointing co-counsel and advisory counsel, so I don't need to quote that to the court; but I am asking for the assistance of counsel to help me present my defense." Id. at 24.

Prior to the August 9th hearing, petitioner had requested advisory counsel three times. (Aug. RT 18-20, 24-25; Pet., ex. E, transcript dated April 16, 1990, at 3-4, transcript dated July 13, 1990, at 6). The court denied these requests. (Aug. RT at 23-25; Pet., ex. E, transcript dated April 16, 1990, at 3, transcript dated July 13, 1990, at 6).

From the record, some of petitioner's request (sic) for advisory counsel may be considered ambiguous.

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6. Even if appellate counsel thought this argument and appeal were without merit, he still had a duty under Anders to advise the court of anything in the record which might arguably support the appeal.

It does not appear, however, that the judge attempted to clarify these requests. We recognize that petitioner does not have a constitutional right to advisory counsel. United States v. Kienenberger, 13 F.3d 1354, 1356 (9th Cir. 1994). Petitioner, however, does have the right to a considered exercise of judicial discretion. People v. Bigelow, 37 Cal. 3d 731, 742, 209 Cal. Rptr. 328, 333-34 (1984) (citing People v. Mattson, 51 Cal. 2d 777, 797, 336 P.2d 937 (1959) (the appointment of advisory counsel is within the sound discretion of the trial judge who is in the best position to appraise the situation)).

On these facts, it is unclear whether the judge focused on the proper legal standard. At the hearing held on January 24, 1990, the court responded to petitioner's request for advisory counsel by stating, "[t]he problem is you either get to go pro per or you have a lawyer." (Aug. RT 19). This is an apparent error of law. There would never be advisory counsel if a defendant could only proceed pro per or with a lawyer. Indeed, California courts frequently exercise their discretion to appoint advisory counsel. Bigelow, 37 Cal. 3d at 742, 209 Cal. Rptr. at 334. The trial judge, therefore, was at least required to exercise his discretion, especially given that petitioner was charged with murder.

B. Primary Counsel

Moreover, it is also arguable that petitioner was also requesting primary counsel. Fairly read, petitioner asked for the appointment of counsel as an alternative to advisory counsel. See United States v. Robinson, 913 F.2d 712, 718 (9th Cir. 1990), cert. denied, 498 U.S. 1104 (1991) (Sixth Amendment rights attach at critical stages, such as a motion for new trial or sentencing, even though a defendant had previously waived his right to counsel and represented himself at

trial); Menefield v. Borg, 881 F.2d 696, 698 (9th Cir. 1989) (same). Because the judge failed to even consider whether petitioner was reasserting his right to counsel, it, too, is a non-frivolous issue which should have been raised by petitioner's appellate counsel.[7]

CONCLUSION

IT IS ADJUDGED that the petition for writ of habeas corpus is GRANTED, to the extent that petitioner shall be discharged from custody on the subject conviction unless the California Court of Appeal accepts jurisdiction over petitioner's direct appeal within 30 days; respondents shall notify the California Court of Appeal of this court's order.

Dated: This 24th day of October, 1995

GEORGE H. KING
United States District Judge

7. We reiterate that it is unnecessary for us to inquire into further violations of Anders because, as respondents concede, if there are any arguable issues, prejudice is presumed.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Jesus F. Marroquin, Petitioner, v. K.W. Prunty, Warden, Respondent.	)	CV 95-2477-KN (SH)
	)	ORDER Re: Habeas Corpus Petition

Pursuant to 28 U.S.C. § 636(b)(1)(C), the Court has reviewed the Final Report and Recommendation of the United States Magistrate Judge. The Court declines to follow the recommendations of the Magistrate Judge and hereby **DENIES** the Petition.

Petitioner alleges that the California Court of Appeal's failure to request further briefing from his appellate counsel and its denial of his request for new counsel to brief his appellate issues prior to ruling on the merits violated his Sixth and Fourteenth Amendment right to counsel. The United States Supreme Court in Penson

v. Ohio, 488 U.S. 75, 80 (1988) held that if there are nonfrivolous issues on appeal, the appellate court "must, prior to the decision, afford the indigent the assistance of counsel to argue the appeal." In California, appellate counsel for an indigent may file a brief containing only a statement of the facts and the applicable law if counsel believes that there are no meritorious issues on appeal. People v. Feggans, 67 Cal.2d 444 (1964). If appellate counsel files such a brief, the appellate court "must then itself conduct a full examination of all the proceedings to decide whether the case is wholly frivolous . . . . [O]nly after the appellate court finds no nonfrivolous issues for appeal, may the court proceed to consider the appeal on the merits without the assistance of counsel." Penson, supra, at 80 (internal quotations and brackets omitted).

In the instant case, Petitioner was appointed appellate counsel. Counsel filed a "no-merit brief" pursuant to Feggans, having determined that there were no meritorious issues on appeal. The California Court of Appeal then made its own independent determination that the appeal was frivolous. The Court of Appeal in its opinion did address the merits of one issue: the trial court's denial of Petitioner's motion to exclude evidence of a prior felony conviction. However, although the appellate court addressed the merits of this issue (and determined that it was proper to admit such evidence), the court carefully pointed out that a "review of the record reveals that, despite extensive argument on the subject and the trial court's denial of the motion to exclude, the prosecutor never introduced the conviction into evidence." Thus, while the admission of the prior felony conviction would have been an arguable issue on appeal, the fact that the conviction was never admitted rendered the issue moot. The court went on to state that "Defendant's other contentions are equally unsupported by the record" and "no arguable issues exist."

Having conducted its own independent review of the record and determined that all issues raised on appeal were frivolous, the Court of Appeals had no obligation to either request further briefing from Petitioner's appellate counsel, or appoint new appellate counsel for Petitioner to brief the issues on appeal prior to ruling on the merits of Petitioner's appeal. The Court of Appeals fully complied with the requirements of Penson v. Ohio.

Petitioner's assertion that he was denied the assistance of appellate counsel in violation of the Sixth and Fourteenth Amendment has no merit, as Petitioner failed to raise any non-frivolous issues on appeal. The Court therefore **DENIES** the Petition for a Writ of Habeas Corpus.

IT IS SO ORDERED.

DATED:_____

_____
DAVID V. KENYON
UNITED STATES DISTRICT JUDGE

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FOR PUBLICATIONS
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LEE ROBBINS, Petitioner-Appellee, v. GEORGE SMITH, Warden, CALIFORNIA DEPARTMENT OF CORRECTIONS, Respondent-Appellant.	)	No. 95-56640 D.C. No. CV-94-01157-GHK

LEE ROBBINS, Petitioner-Appellant, v. GEORGE SMITH, Respondent-Appellee.	)	No. 96-55063 D.C. No. CV-94-01157-GHK OPINION

Appeals from the United States District Court
for the Central District of California
George H. King, District Judge, Presiding

Argued and Submitted
October 8, 1996-Pasadena, California

Filed September 23, 1997

Before: Proctor Hug, Jr., Chief Judge,
Harry Pregerson and Stephen Reinhardt, Circuit Judges.
Opinion by Chief Judge Hug

SUMMARY

Criminal Law and Procedure/Habeas

The court of appeals affirmed in part a judgment of the district court and remanded. The court held that district courts must rule on all claims raised in a petition for habeas corpus, even if the petition is granted on one claim to avoid injustice to a petitioner potentially deserving a retrial and possibly an acquittal.

Appellee Lee Robbins represented himself at trial and was convicted of second-degree murder and grand theft auto. Appointed counsel for his state appeal filed a no-merit brief which failed to present any possible grounds for appeal. The brief included a request that the court review the record for arguable issues. Robbins filed a brief on his own behalf.

The state court of appeals denied Robbins's appeal. His petition for review by the state supreme court was also denied.

Robbins filed a federal habeas corpus petition, alleging that his appointed state appellate counsel failed to present his claims in accordance with *Anders v. California*, 386 U.S. 738 (1967). He also raised numerous trial errors.

The district court granted a conditional writ of habeas corpus, finding that at least two non-frivolous issues existed for appeal: (1) the trial court erred in failing to allow Robbins to withdraw the waiver of his right to counsel; and (2) the court failed to provide him with

either the money or the means to prepare his own defense.

The government appealed, arguing that appointed counsel's actions satisfied the requirement of *Anders*; the district court erred in basing its grant of Robbins's petition on the finding that at least two arguable issues existed for appeal; and the application of *Anders* violated *Teague v. Lane*, 489 U.S. 288 (1989).

Robbins cross-appealed, arguing that the district court should have granted relief on his claims of constitutional error in the trial, entitling him to a new trial.

[1] The provisions of the Antiterrorism and Effective Death Penalty Act were not applicable because Robbins filed his petition prior to the Act's effective date.

[2] *Anders* is the Supreme Court's landmark pronouncement setting fourth court-appointed appellate counsel's duty to further a client's case after determining the appeal to be without merit. [3] The Fourteenth Amendment does not demand that appointed counsel pursue wholly frivolous appeals; however, under *Anders*, appointed counsel must either provide active and vigorous appellate representation of indigent criminal defendants or, after conducting a conscientious examination of the record and concluding that any appeal would be wholly frivolous, request leave to withdraw and file a brief identifying anything in the record that might arguably support an appeal.

[4] Robbins's appointed counsel neither provided active and vigorous appellate representation, nor complied with *Anders*.

[5] *Anders* creates a very low threshold for which arguments counsel must brief for the court. Counsel must bring to the court's attention anything in the record that might arguably support the appeal. [6] The two issues identified by the district court were arguably non-frivolous and should have caused the state to appoint new counsel for Robbins.

[7] In *Teague*, the Supreme Court held that new constitutional rules cannot be applied retroactively to cases on collateral review unless they fall into one of two narrow exceptions. A case announces a new rule if the result was not dictated by precedent existing at the time the defendant's conviction became final.

[8] The district court's holding did not involve a new rule. The outcome of Robbins's case was predetermined by the Supreme Court's analysis in *Anders*, which was handed down before Robbins's conviction.

[9] Had Robbins not raised the *Anders* issue, the district court would have reached the merits of Robbins's claims of constitutional error at trial. Had the district court ruled in Robbins's favor on them, a grant of habeas relief would have required either release or a new trial.

[10] The district courts have been directed to rule on all claims raised in a petition for habeas corpus, even if the petition is granted on one. [11] Granting the writ only for the ineffective assistance of counsel on appeal leaves the challenges underlying the conviction unresolved. This can cause grave injustices to defendants who must await resolution of a renewed appeal while potentially deserving a retrial and possibly an acquittal. [12] Remand was

required for the district court to consider Robbins's claims of constitutional error at trial.

COUNSEL

Carol Frederick Jorstad, Deputy Attorney General, Los Angeles, California, for the respondent-appellant-appellee.

Elizabeth A. Newman and Ronald J. Nessim, Bird, Marella, Boxer, Wolpert & Matz, Los Angeles, California, for the petitioner-appellee-appellant.

OPINION

HUG, Chief Judge:

Robbins was convicted in California state court of second-degree murder and grand theft auto. His petition for habeas corpus alleges that his rights under the United States Constitution were violated because of constitutional errors in his trial and also because of ineffective assistance of counsel in his direct appeal. The district court held that Robbins was denied effective assistance of counsel on appeal because of the failure of his appointed counsel to comply with the minimum requirements of *Anders v. California*, 386 U.S. 738 (1967). The district court did not reach the exhausted issues set forth in Robbins' petition concerning the alleged violation of his constitutional rights at the trial stage. The district court's order would only require that Robbins be afforded an opportunity to appeal his conviction with the aid of effective counsel.

We have jurisdiction pursuant to 28 U.S.C. §2253 and we affirm the district court's granting of Robbins's habeas petition on the *Anders* issue. We remand, however, to the district court for consideration of the alleged constitutional violations at trial that have been properly exhausted in the state courts. We hold that Robbins is entitled to consideration of these issues at this time. If the petition is granted on any of those grounds, it would obviate the necessity for an appeal. If the petition is denied on those grounds, the new appeal in the state court as required by the district court order would, of course, not be confined to exhausted issues, but would be a renewed direct appeal.

I. FACTS AND PRIOR PROCEEDINGS

Lee Robbins, an indigent defendant, represented himself at trial, where he was convicted of second-degree murder and grand theft auto. He was sentenced to seventeen years to life in the California state prison on September 5, 1990.

Robbins received appointed counsel for his state appeal. His attorney filed a no-merit brief before the court, which briefly outlined the facts surrounding Robbins's trial and failed to present any possible grounds for appeal. Included in the short document was a request that the court itself review the record for arguable issues. Counsel pledged to remain "available to brief any [issue(s)] upon invitation of the court."

Robbins subsequently filed a brief on his own behalf. After the California Court of Appeals found Robbins's claims to be unsupported by the record and that no other arguable issues existed, his appeal was denied on December 12, 1991. Robbins's petition for review by the

California Supreme Court was denied on October 21 of the following year.

After exhausting his state remedies on January 26, 1994,[1] Robbins filed, pursuant to 28 U.S.C. §2254, an amended first federal habeas petition on February 24, 1994. He argued that his appointed state appellate counsel failed to present his claims in accordance with *Anders v. California*, 386 U.S. 738 (1967). He also raised numerous trial errors, among them: (1) that the prosecutor had violated his duty to disclose exculpatory evidence under *Brady v. Maryland*, 373 U.S. 83 (1963); (2) that the court had erred in failing to allow Robbins to withdraw the waiver of his right to counsel; (3) that the court had failed to provide him with either the money or the means to prepare a case in his own defense; and (4) that the court had deprived him of his right to a fair trial by failing to secure the presence of the witnesses he had subpoenaed.

After counsel was appointed to represent Robbins, and after several rounds of supplemental briefing, the district court granted his habeas petition on October 24, 1995, "to the extent that petitioner shall be discharged from custody unless the California Court of Appeal accepts jurisdiction over petitioner's direct appeal within 30 days." The State of California appealed. Robbins cross-appealed, arguing that the district court should have

1. Robbins filed a habeas petition in state court, which the California Supreme Court ultimately denied on the merits. The petition raised the same issues Robbins now raises in his federal habeas petition.

granted relief on his claims of constitutional error in the trial, thereby entitling him to a new trial.

II. *Applicability Of AEDPA*

[1] As a threshold matter, we must decide whether the new substantive and procedural requirements of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), signed into law on April 24, 1996, are applicable to this case. Though the answer to the question was not clear at the time of oral argument, the Supreme Court has since held that the sections of AEDPA relevant to this case do not apply to cases filed in the federal courts prior to the Act's effective date of April 24, 1996. *See Lindh v. Murphy,* 117 S. Ct. 2059, 2068 (1997); *see also Jeffries v. Wood*, 103 F.3d 827, 827 (9th Cir. 1996). Robbins filed his § 2254 petition in the district court in February 1994. Thus, the provisions of AEDPA do not apply to this petition.

III. *The State's Appeal*

The district court held that Robbins's representation during his direct appeal was ineffective under *Anders v. California*, 386 U.S. 738 (1967). It was on this basis that the district court granted a conditional writ of habeas corpus. The State appeals that order, arguing (1) that the brief filed by Robbins's appointed counsel complied with *Anders* as interpreted by the California Supreme Court, (2) that the district court erred in finding that arguably nonfrivolous issues existed, and (3) that the application of *Anders* violates *Teague v. Lane*, 489 U.S. 288 (1989). We address each of these arguments below.

[2] *Anders* is the Supreme Court's landmark pronouncement setting forth court-appointed appellate counsel's duty to further a client's case after determining the appeal to be without merit. *Anders* involved the situation where an indigent defendant's appointed counsel, after concluding an appeal was frivolous, filed a letter brief so informing the court. The letter noted that counsel remained at the court's disposal to brief any issues that the court were to see fit. The defendant's request for replacement counsel was denied, and the California Court of Appeals affirmed the conviction.

Anders subsequently filed a federal habeas petition, arguing that his right to effective counsel on appeal had been violated. The Supreme Court agreed. The Court was convinced that the appellate court reviewed Ander's claim without the benefit of briefing or advocacy based on "counsel's bare conclusion" that the appeal was frivolous. *Anders*, 386 U.S. at 742. The Court held that such a letter brief from defendant's counsel "'cannot be an adequate substitute for the right to full appellate review.'" *Id.* (quoting *Eskridge v. Washington State Bd.*, 357 U.S. 214, 215 (1958)).

[3] In *Penson v. Ohio*, the Supreme Court explained that "*Andres*, in essence, recognizes a limited exception to the requirement articulated in [*Douglas v. California*, 372 U.S. 353 (1963)] that indigent defendants receive representation on their first appeal as of right." *Penson v. Ohio,* 488 U.S. 75, 83 (1988). This limited exception recognizes that the Fourteenth Amendment does not demand that a State require that appointed counsel pursue wholly frivolous appeals. *Id.* at 83-84. *Anders* and *Douglas* thus set forth the exclusive procedure through which appointed counsel's performance can pass

constitutional muster: Appointed counsel must either provide active and vigorous appellate representation of indigent criminal defendants or, after conducting a conscientious examination of the record and concluding that any appeal would be wholly frivolous, request leave to withdraw and file a brief identifying anything in the record that might arguably support an appeal. *See Anders,* 386 U.S. at 744; *see also Penson,* 488 U.S. at 80, 83-84.

The California Supreme Court interpreted *Anders in People* v. *Feggans,* 67 Cal. 2d 444, 432 P.2d 21 (1967), and later in *People v. Wende*, 25 Cal. 3d 436, 600 P.2d 1071 (1979). The State contends that, because Robbins's state appellate counsel's brief complies with the strictures of *Wende*, the district court erred in determining the brief to be insufficient under *Anders.* The State argues that appointed counsel's actions in this case satisfy the requirements of *Anders,* as construed by *Feggans* and *Wende*, because: (1) the nonexistence of arguable issues should have been inferred from counsel's failure to raise any; and (2) despite the fact that it should have been inferred that counsel concluded that there was a lack of arguable issues, it was not incumbent on him to withdraw because he had not "disabled himself from effectively representing" Robbins by describing his case as frivolous. *See Wende*, 600 P.2d at 1075.

[4] Accepting the State's contention, that the state court decision in *Wende* allows a departure from the strict requirements of *Anders*, would override Supreme Court precedent. Our obligation in this habeas action is to determine whether appellate counsel met his obligations under the united States Supreme Court's requirements set forth in *Anders* and its progeny. It is apparent that those requirements were not met. Robbins's appointed counsel

neither provided active and vigorous appellate representation nor complied with *Anders*. The brief filed on Robbins's behalf completely failed to identify any grounds that arguably supported an appeal. Rather, it briefly summarized the procedural and historical facts of the case and requested that the state appellate court "independently review the entire record for arguable issues." Accordingly, the district court correctly found that Robbins's counsel did not comply with *Anders*.

The State also argues that the district court erred in basing its grant of Robbins's petition on the finding that at least two arguable issues existed for appeal. In making this argument, the State assumes that the nonexistence of arguable issues would render appointed counsel's failure to comply with *Anders* harmless. We need not decide whether this assumption is correct because we conclude that the district court correctly determined that arguably nonfrivolous issues existed.

The district court found that at least two nonfrivolous appellate issues existed in Robbins's case: (1) that the denial of Robbins's attempt to withdraw the waiver of his right to counsel constituted error; and (2) that the inadequacy of the county jail's library deprived him of a meaningful opportunity to prepare his defense. It further noted that there may well be other arguable issues. Robbins also points to several other exhausted, arguably nonfrivolous appellate issues, including prosecutorial misconduct in violation of *Brady v. Maryland*, wrongful denial of Robbins's *Marsden* motions (motions under California law relating to the substitution of counsel), and interference with Robbins's constitutional right to prepare an adequate defense on his own behalf.

[5] *Anders* creates a very low threshold for which arguments counsel must brief for the court. *See United States v. Griffy*, 895 F.2d 561, 563 (9th Cir. 1990); *Lombard v. Lynaugh*, 868 F.2d 1475, 1487 (5th Cir. 1989) (Goldberg, J., concurring). Certainly, counsel need not argue only "winning" arguments. Instead, counsel must bring to the court's attention "anything in the record that might arguably support the appeal." *Anders*, 386, U.S. at 744. For purposes of California law, an issue is "arguable" when it has some potential for success, meaning some possibility of a result requiring reversal or modification of the judgment. *People v. Johnson*, 123 Cal. App. 3d 106, 109 (1981).

[6] The two issues identified by the district court --- (1) whether the denial of Robbins's attempt to withdraw the waiver of his right to counsel constituted error; and (2)whether the inadequacy of the county jails library deprived him of a meaningful opportunity to prepare his defense --- are arguably nonfrivolous and should have caused the state appellate court to appoint new counsel for Robbins.[2] As noted by the district court:

> The right guaranteed by the Fourteenth and Sixth Amendments to waive one's right to counsel and proceed in pro per "is premised upon the right of the defendant to make a defense." *Milton v. Morris*, 767 F.2d 1443, 1445-46 (9th Cir. 1985) (citing *Faretta v. California*, 422 U.S. 806, 819-20 (1975)). An incarcerated defendant cannot meaningfully exercise this right without access to tools such as law books. *Id.* at 1446; *Taylor v. List*, 880 F.2d 1040, 1047 (9th Cir. 1989).

2. Because we conclude that the district court correctly identified at least two arguably nonfrivolous issues, we need not determine whether arguably nonfrivolous issues exist.

The California trial judge's own words ---- "it's almost impossible as a pro per to prepare yourself a decent defense, especially given the law library" --- justify the district court's conclusion that Robbins's inability to prepare an adequate defense was, in the very least, an arguable issues. The California trial judge even told Robbins that "if you are looking up law, you are not going to be able to find it because somebody has torn it out before you got there." There is some potential, had Robbins's appointed counsel raised and vigorously advanced this issue on appeal, that Robbins's conviction would have been reversed.

As the district court noted, the California trial court's treatment of Robbins's request to withdraw his waiver of his right to counsel also raises a serious constitutional question. The district court stated, "[f]airly read, petitioner asked for the appointment of counsel as an alternative to advisory counsel. Because the judge failed to even consider whether petitioner was reasserting his right to counsel, it too is a nonfrivolous issue which should have been raised by petitioner's appellate counsel." We agree.

[7] Finally, the State argues that granting relief on Robbins's *Anders* claim violates *Teague v. Lane*. *Teague* held that new constitutional rules cannot be applied retroactively to cases on collateral review unless they fall into one of two narrow exceptions. "[A] case announces a new rule if the result was not *dictated* by precedent

existing at the time the defendant's conviction became final." *Teague,* 489 U.S. at 301. Therefore, we must determine, "'whether a state court considering [the defendant's] claim at the time his conviction became final would have felt compelled by existing precedent to conclude that the rule [he] seeks was required by the Constitution.'" *Goeke v. Branch*, 514 U.S. 115, 118 (1995) (quoting *Caspari v. Bohlen,* 510 U.S. 383, 390 (1994)).

[8] It is clear that the district court's holding in this case did not involve a new rule. Our discussion above indicates that the outcome of Robbins's case was predetermined by the controlling analysis provided by the Supreme Court in *Anders* and *Penson*, both of which were handed down before Robbins's conviction. The consequences of counsel's failure to raise arguable issues were unambiguously detailed in *Anders*. Application of *Anders* to this case required no extension of precedent or logical interpolation. The facts of Robbins's case almost directly mirrors those of *Anders*. In light of these considerations, the *Goeke* test confirms that no "new" constitutional rule was invoked in this case.

IV. *Robbins's Cross-Appeal*

Robbins argues in his cross-appeal that the district court erred when it failed to consider and to rule upon his allegations of constitutional error in the state court trial.

[9] Robbins brought eleven exhausted claims in the district court relating to his trial. Had Robbins not raised the *Anders* issue, the district court would have reached the merits of those claims. Had the district court ruled in Robbins's favor on them, a grant of habeas relief would have required either release or a new trial. The need for

a new direct appeal --- the remedy granted by the district court --- would be obviated by this outcome. Robbins is entitled to have these foundational claims in his habeas petition considered first.

[10] The Eleventh Circuit has, in the exercise of its supervisory authority, directed district courts to rule on all claims raised in a petition for habeas corpus, even if the petition is granted on one claim. *Clisby v. Jones*, 960 F.2d 925, 936 (11th Cir. 1992) (en banc). This has the advantage of avoiding possible remands for consideration of remaining claims if the district court's decision on one claim is reversed. It has the disadvantage of requiring considerable extra work by the district court to decide many claims that may be completely unnecessary, because they will be mooted on appeal.

[11] We have taken a different approach in our circuit. In *Blazak v. Ricketts,* 971 F.2d 1408, 1413 (9th Cir. 1992) (per curiam), we declined to apply the *Clisby* approach to a capital case in which the district court granted the writ on one guilt phase issue without deciding all the remaining guilt phase issues or any of the penalty phase issues. We drew a distinction, however, between a case which granted a petition on a sentencing issue but left unresolved an issue affecting the validity of the conviction. *Id.* at 1413-14. We stated:

> Moreover, unlike habeas grants exclusively on sentencing issues, the grant of a habeas petition because of the constitutional invalidity of a conviction raises concerns that a possibly innocent person has been unjustifiably incarcerated on death row for a number of years. Delaying retrial in such cases, while

> attorneys fight over a sentence that may no longer exist, risks the perpetuation of a monumental injustice, should retrial ultimately result in an acquittal.

Id. at 1414 n.7; *see also Rice v. Wood*, 44 F.3d 1396, 1402 n.10 (9th Cir. 1995). The same policy considerations are involved in this case. Granting the writ only for the ineffective assistance of counsel on appeal leaves the challenges underlying the conviction unresolved. Resolving other issues while leaving challenges to the underlying conviction unresolved potentially can cause grave injustice to defendants like Robbins who, despite alleging constitutional shortcomings in the trial process, must await resolution of a renewed appeal while potentially deserving a retrial and possibly an acquittal.

Penson v. Ohio, cited by California in opposition to Robbins's claim, is inapposite. *Penson* was an indigent defendant who was convicted of several serious felonies. His appointed appellate counsel filed a letter brief certifying his appeal to be meritless and asking to withdraw. In violation of *Anders*, the Ohio Court of Appeals allowed counsel to withdraw and conducted its own review of the record without the benefit of advocacy or briefing. *Penson*, 488 U.S. at 78. The Ohio Court found "several arguable claims," reversed one of his convictions, and then dismissed his appeal. *Id.* at 79. *Penson* petitioned for a writ of certiorari. The Supreme Court granted the petition and reversed.

[12] *Penson* is unlike the case at bar because it involved the Supreme Court's review of the Ohio appellate court's dismissal of *Penson's* direct appeal. When the Court recognized that "several arguably

meritorious grounds for reversal" existed, it remanded the matter to the Ohio appellate court for further proceedings. *Id.* It was, however, reviewing the direct appeal of a state court action, and not a habeas petition. In this circumstance, the Court explained that it would not "sit in place of the Ohio Court of Appeals *in the first instance* to determine whether petitioner was prejudiced as to any appellate issue." *Id.* at 87 n.9 (emphasis added). In this habeas proceeding the district court will be considering alleged constitutional errors in the defendant's trial that have been exhausted in the state court. Robbins is entitled to have those trial issues considered at this time just as any other habeas petitioner would. The fact that Robbins also presents an allegation of ineffective assistance of appellate counsel is a secondary issue that comes into play only if the district court denies relief for trial errors. That appeal would then be a renewal of the direct appeal as in *Penson* and could encompass any issues that could have been raised on direct appeal.

Because the district court should have addressed the claims of trial error first, it might not have needed to address Robbins's claims of appellate error as well. Because it did address the appellate claims, however, and because it decided those questions correctly, it is in the interest of judicial economy and efficiency to affirm them now. If trial error is found to have occurred and to require vacation of the conviction, the appellate errors will become immaterial. If no such trial errors are found, however, the district court's original order will again become applicable. *Cf. Penson*, 488 U.S. at 88-89 (the actual or constructive denial of assistance of counsel is presumed to result in prejudice); *Lombard*, 868 F.2d at 1487 (formal physical presence of appellate attorney is not appellate counsel; defendant constructively denied

assistance of counsel where attorney filed document containing no arguments going to merits of appeal).

V. *CONCLUSION*

The judgment of the district court is **AFFIRMED IN PART** but the case is **REMANDED** to the district court for consideration of whether the alleged constitutional trial errors that defendant raises merit reversal of Robbins's underlying convictions and the granting of a new trial.

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LEE ROBBINS, Petitioner-Appellee, v. GEORGE SMITH, Warden, CALIFORNIA DEPARTMENT OF CORRECTIONS, Respondent-Appellant.	)	No. 95-56640 D.C. No. CV-94-01157-GHK
LEE ROBBINS, Petitioner-Appellant, v. GEORGE SMITH, Respondent-Appellee.	)	No. 96-55063 D.C. No. CV-94-01157-GHK AMENDED OPINION

Appeals from the United States District Court
for the Central District of California
George H. King, District Judge, Presiding

Argued and Submitted
October 8, 1996-Pasadena, California

Filed September 23, 1997
Amended August 13, 1998

Before: Proctor Hug, Jr., Chief Judge,
Harry Pregerson and Stephen Reinhardt, Circuit Judges.
Opinion by Chief Judge Hug

SUMMARY

Criminal Law and Procedure/Habeas

The court of appeals affirmed a judgment of the district court in part. The court held that a district court must rule on all exhausted claims of trial error raised in a habeas corpus petition even if the court grants the petition on a claim of ineffective assistance of appellate counsel.

Appellee Lee Robbins represented himself at trial and was convicted of second-degree murder and grand theft auto. Appointed counsel for his state appeal filed a no-merit brief which failed to present any possible grounds for appeal. The brief included a request that the court review the record for arguable issues. Robbins filed a brief on his own behalf.

The California Court of Appeal affirmed Robbins's conviction. The California Supreme Court denied his petition for review.

Robbins filed a federal corpus petition, alleging that his appointed state appellate counsel failed to present his claims in accordance with *Anders v. California*, 386 U.S. 738 (1967). He also raised numerous trial errors.

The district court granted a conditional writ, concluding that at least two non-frivolous issues existed for appeal: (1) the trial court erred in failing to allow Robbins to withdraw the waiver of his right to counsel; and (2) the court failed to provide him with either the money or the means to prepare his own defense.

The State appealed, contending that appointed counsel's actions satisfied the requirement of *Anders*; the district court erred in basing its grant of Robbins's petition on the finding that at least two arguable issues existed for appeal; and the application of *Anders* violated *Teague v. Lane*, 489 U.S. 288 (1989).

Robbins cross-appealed, asserting that the district court should have granted relief on his claims of constitutional error in the trial, entitling him to a new trial.

[1] The provisions of the Antiterrorism and Effective Death Penalty Act were not applicable because Robbins filed his petition prior to the Act's effective date.

[2] *Anders* set forth court-appointed appellate counsel's duty to further a client's case after determining the appeal to be without merit. [3] Appointed counsel must either provide active and vigorous appellate representation of indigent criminal defendants or, after conducting a conscientious examination of the record and concluding that any appeal would be wholly frivolous, request leave to withdraw and file a brief identifying anything in the record that might arguably support an appeal.

[4] The obligation of the court of appeals was to determine whether appellate counsel met his obligation under *Anders* and it progeny. Robbins's appointed counsel neither provided active and vigorous appellate representation, nor complied with *Anders*. The brief filed on Robbins's behalf completely failed to identify any grounds that arguably supported an appeal. Accordingly,

the district court correctly found that Robbins's counsel did not comply with *Anders*.

[5] *Anders* creates a very low threshold for which arguments counsel must brief for the court. Counsel must bring to the court's attention anything in the record that might arguably support the appeal. [6] The two issues identified by the district court were arguable and should have caused the state appellate court to appoint new counsel for Robbins.

[7] *Teague* held that new constitutional rules cannot be applied retroactively to cases on collateral review unless by fall into one of two narrow exceptions. The district court's holding did not involve a new rule. The facts of Robbins's case almost directly mirrored those of *Anders*. Accordingly, no "new" constitutional rule was invoked.

[8] Had Robbins not raised the Anders issue, the district court would have reached the merits of Robbins's claims of constitutional error at trial. Had the district court ruled in Robbins's favor on them, a grant of habeas relief would have required either release or a new trial.

[9] The district courts have been directed to rule on claims raised in a petition for habeas corpus, even if the petition is granted on one. [10] Granting the writ only for the effective assistance counsel on appeal leaves the challenges underlying the conviction unresolved. This can cause grave injustices to defendants who must await resolution of a renewed appeal while potentially deserving a retrial and possibly an acquittal. [11] Robbins was

entitled to have trial issues considered just as any other habeas petitioner would. That Robbins also presented an allegation of ineffective assistance of appellate counsel was a secondary issue that would come into play only if the district court were to deny relief for trial errors. That appeal would be a renewal of the direct appeal, and could encompass any issues that could have been raised on direct appeal.

[12] Because the district court addressed the appellate claims and decided them correctly, it was in the interest of judicial economy and efficiency to affirm them. If trial error were found to have occurred and required vacation of the conviction, the appellate errors would become immaterial. If no such trial errors were found, the district court's original order would again become applicable.

COUNSEL

Carol Frederick Jorstad, Deputy Attorney General, Los Angeles, California for the respondent-appellant-cross-appellee. Elizabeth A. Newman and Ronald J. Nessim, Bird, Marella, Boxer, Wolpert & Matz, Los Angeles, California, for the petitioner-appellee-cross-appellant.

OPINION

HUG, Chief Judge:

Robbins was convicted in California state court of second-degree murder and grand theft auto. His petition for habeas corpus alleges that his rights under the United States Constitution were violated because of constitutional errors in his trial and also because of ineffective assistance

of counsel in his direct appeal. The district court held that Robbins was denied effective assistance of counsel on appeal because of the failure of his appointed counsel to comply with the minimum requirements of *Anders v. California*, 386 U.S. 738 (1967). The district court did not reach the exhausted issues set forth in Robbins' petition concerning the alleged violation of his constitutional rights at the trial stage. The district court's order would only require that Robbins be afforded an opportunity to appeal his conviction with the aid of effective counsel.

We have jurisdiction pursuant to 28 U.S.C. § 2253 and we affirm the district court's granting of Robbins's habeas petition on the *Anders* issue. We remand, however, to the district court for consideration of the alleged constitutional violations at trial that have been properly exhausted in the state courts. We hold that Robbins is entitled to consideration of these issues at this time. If the petition is granted on any of those grounds, it would obviate the necessity for an appeal. If the petition is denied on those grounds, the new appeal in the state court as required by the district court order would, of course, not be confined to exhausted issues, but would be a renewed direct appeal.

I. FACTS AND PRIOR PROCEEDINGS

Lee Robbins, an indigent defendant, represented himself at trial, where he was convicted of second-degree murder and grand theft auto. He was sentenced to seventeen years to life in the California state prison on September 5, 1990.

Robbins received appointed counsel for his state appeal. His attorney filed a no-merit brief before the court, which briefly outlined the facts surrounding Robbins's trial and failed to present any possible grounds for appeal. Included in the short document was a request that the court itself review the record for arguable issues. Counsel pledged to remain "available to brief any [issues(s)] upon invitation of the court."

Robbins subsequently filed a brief on his own behalf. After the California Court of Appeals found Robbins's claims to be unsupported by the record and that no other arguable issues existed, his appeal was denied on December 12, 1991. Robbins's petition for review by the California Supreme Court was denied on October 21 of the following year.

After exhausting his state remedies on January 26, 1994,[1] Robbins filed, pursuant to 28 U.S.C. § 2254, an amended first federal petition on February 24, 1994. He argued that his appointed state appellate counsel failed to present his claims in accordance with *Anders v. California*, 386 U.S. 738 (1967). He also raised numerous trial errors, among them: (1) that the prosecutor had violated his duty to disclose exculpatory evidence under *Brady v. Maryland*, 373 U.S. 83 (1963); (2) that the court had erred in failing to allow Robbins to withdraw the waiver of his right to counsel; (3) that the court had failed to provide him with either the money or the means to prepare a case in his

1. Robbins filed a habeas petition in state court, which the California Supreme Court ultimately denied on the merits. The petition raised the same issues that Robbins now raises in his federal habeas petition.

own defense; and (4) that the court had deprived him of his right to a fair trial by failing to secure the presence of the witnesses he had subpoeaned.

After counsel was appointed to represent Robbins, and after several rounds of supplemental briefing, the district court granted his habeas petition on October 24, 1995, "to the extent that petitioner shall be discharged from custody unless the California Court of Appeal accepts jurisdiction over petitioner's direct appeal within 30 days." The State of California appealed. Robbins cross-appealed, arguing that the district court should have granted relief on his claims of constitutional error in the trial, thereby entitling him to a new trial.

II. Applicability Of AEDPA

[1] As a threshold matter, we must decide whether the new substantive and procedural requirements of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), signed into law on April 24, 1996, are applicable to this case. Though the answer to the question was not clear at the time of oral argument, the Supreme Court has since held that the sections of AEDPA relevant to this case do not apply to cases filed in the federal courts prior to the Act's effective date of April 24, 1996. *See Lindh v. Murphy*, 117 S. Ct. 2059, 2068 (1997); *see also Jeffries v. Wood*, 103 F.3d 827, 827 (9th Cir. 1996). Robbins filed his § 2254 petition in the district court in February 1994. Thus, the provisions of AEDPA do not apply to this petition.

III. The State's Appeal

The district court held that Robbins's representation during his direct appeal was ineffective under *Anders v. California*, 386 U.S. 738 (1967). It was on this basis that the district court granted a conditional writ of habeas corpus. The State appeals that order, arguing (1) that the brief filed by Robbins's appointed counsel complied with *Anders* as interpreted by the California Supreme Court. (2) that the district court erred in finding that arguable issues existed, and (3) that the application of *Anders* violates *Teague v. Lane*, 489 U.S. 288 (1989). We address each of these arguments below.

[2] *Anders* is the Supreme Court's landmark pronouncement setting forth court-appointed appellate counsel's duty to further a client's case after determining the appeal to be without merit. *Anders* involved the situation where an indigent defendant's appointed counsel, after concluding an appeal was frivolous, filed a letter brief so informing the court. The letter noted that counsel remained at the court's disposal to brief any issues that the court were to see fit. The defendant's request for replacement counsel was denied, and the California Court of Appeals affirmed the conviction.

Anders subsequently filed a federal habeas petition, arguing that his right to effective counsel on appeal had been violated. The Supreme Court agreed. The Court was convinced that the appellate court reviewed Anders's claim without the benefit of briefing or advocacy based on "counsel's bare conclusion" that the appeal was frivolous. *Anders*, 386 U.S. at 742. The Court held that such a letter brief from defendant's counsel "'cannot be an adequate substitute for the right to full appellate review.'" *Id.*

(quoting *Eskridge v. Washington State Bd.*, 357 U.S. 214, 215 (1958)).

The Court in *Anders* outlined the appropriate procedures as follows:

> The constitutional requirement of substantial equality and fair process can only be attained where counsel acts in the role of an active advocate in behalf of his client, as opposed to that of *amicus curiae*. The no-merit letter and the procedure it triggers do not reach that dignity. Counsel should, and can with honor and without conflict, be of more assistance to his client and to the court. His role as advocate requires that he support his client's appeal to the best of his ability. Of course, if counsel finds his case to be wholly frivolous after a conscientious examination of it, he should so advise the court and request permission to withdraw. That request must, however, be accompanied by a brief referring to anything in the record that might arguably support the appeal. A copy of counsel's brief should be furnished the indigent and time allowed him to raise any points that he chooses; the court - not counsel - then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous. If it so finds it may grant counsel's request to withdraw and dismiss the appeal insofar as federal requirements are concerned, or proceed to a decision on the merits, if state law so requires. On the other hand, if it finds any of the legal points arguable on their merits (and

> therefore not frivolous) it must, prior to decision, afford the indigent the assistance of counsel to argue the appeal.

Anders, 386 U.S. at 744.

[3] In *Penson v. Ohio*, the Supreme Court explained that "*Anders*, in essence, recognizes a limited exception to the requirement articulated in [*Douglas v. California*, 372 U.S. 353 (1963)] that indigent defendants receive representation on their first appeal as of right." *Penson v. Ohio*, 488 U.S. 75, 83 (1988). This limited exception recognizes that the Fourteenth Amendment does not demand that a State require that appointed counsel pursue wholly frivolous appeals. *Id.* at 83-84. *Anders* and *Douglas* thus set forth the exclusive procedure through which appointed counsel's performance can pass constitutional muster: Appointed counsel must either provide active and vigorous appellate representation of indigent criminal defendants or, after concluding that any appeal would be wholly frivolous, request leave to withdraw and file a brief identifying anything in the record that might arguably support an appeal. *See Anders*, 386 U.S. at 744; *see also Penson*, 488 U.S. at 80, 83-84.

The California Supreme Court interpreted *Anders* in *People v. Feggans*, 67 Cal.2d 444, 432 P.2d 21 (1967), and later in *People v. Wende*, 25 Cal. 3d 436, 600 P.2d 1071 (1979). *Wende* quoted *Feggans* as stating the appropriate rule establishing the duty of counsel:

> In *People v. Feggans* (1967) 67 Cal.2d 444, 62 Cal. Rptr. 419, 432 P.2d 21, we responded to the Supreme Court's mandate as follows: "Under *Anders*, regardless of how frivolous an

> appeal may appear . . ., a no-merit letter will not suffice. Counsel must prepare a brief to assist the court in understanding the facts and the legal issues in the case. The brief must set forth a statement of the facts with citations to the transcript, discuss the legal issues with citations of appropriate authority, and argue all issues that are arguable.... If counsel concludes that there are no arguable issues and the appeal is frivolous, he may limit his brief to a statement of the facts and applicable law and may ask to withdraw from the case, but he must not argue the case against his client. Counsel is not allowed to withdraw from the case until the court is satisfied that he has discharged his duty to the court and his client to set forth adequately the facts and issues involved. If counsel is allowed to withdraw, defendant must be given an opportunity to present a brief, and thereafter the court must decide for itself whether the appeal is frivolous. [Citations.] If any contention raised is reasonably arguable, no matter how the court feels it will probably be resolved, the court must appoint another counsel to argue the appeal. (*People v. Feggans, supra*, 67 Cal.2d at 447-48, 62 Cal.Rptr. at 421 P.2d at 23)."

Wende, 600 P.2d at 1073-74.

The State contends that, because Robbins's state appellate counsel's brief complies with the strictures of *Wende*, the district court erred in determining the brief to be insufficient under *Anders*. The State argues that appointed counsel's actions in this case satisfy the

requirements of *Anders*, as construed by *Feggans* and *Wende*, because: (1) the nonexistence of arguable issues should have been inferred from counsel's failure to raise any; and (2) despite the fact that it should have been inferred that counsel concluded that there was a lack of arguable issues, it was not incumbent on him to withdraw because he had not "disabled himself from effectively representing" Robbins by describing his case as frivolous. *See Wende*, 600 P.2d at 1075.

[4] Our obligation in this habeas action is to determine whether appellate counsel met his obligation under the United States Supreme Court's requirement set forth in *Anders* and it progeny.[2] It is apparent that those requirements were not met. Robbins's appointed counsel neither provided active and vigorous appellate representation nor complied with *Anders* and *Feggans*. The brief filed on Robbins's behalf completely failed to identify any grounds that arguably supported an appeal. Rather, it briefly summarized the procedural and historical facts of the case and requested that the state appellate court "independently review the entire record for arguable issues." Accordingly, the district court correctly found that Robbins's counsel did not comply with *Anders*.

The State also argues that the district court erred in basing its grant of Robbins's habeas petition on the finding that at least two arguable issues existed for appeal. In making this argument, the State assumes that the

2. We only address the obligations of appellate counsel in this decision. Our opinion in no way relieves the state court judges of their obligation under *Anders* and *Wende* to conduct their own independent review of the proceedings to decide whether the appeal is wholly frivolous.

nonexistence of arguable issues would render appointed counsel's failure to comply with *Anders* harmless. We need not decide whether this assumption is correct because we conclude that the district court correctly determined that arguable issues existed.

The district court found that at least two nonfrivolous appellate issues existed in Robbins's case: (1) that the denial of Robbins's attempt to withdraw the waiver of his right to counsel constituted error; and (2) that the inadequacy of the county jail's library deprived him of a meaningful opportunity to prepare his defense. It further noted that there may well be other arguable issues. Robbins also points to several other exhausted, arguable appellate issues, including prosecutorial misconduct in violation of *Brady v. Maryland*, wrongful denial of Robbins's *Marsden* motions (motions under California law relating to the substitution of counsel), and interference with Robbins's constitutional right to prepare an adequate defense on his own behalf.

[5] *Anders* creates a very low threshold for which arguments counsel must brief of the court. *See United States v. Griffy*, 895 F.2d 561, 563 (9th Cir. 1990); *Lombard v. Lynaugh*, 868 F.2d 1475, 1487 (5th Cir. 1989) (Goldberg, J., concurring). Certainly, counsel need not argue only "winning" arguments. Instead, counsel must bring to the court's attention "anything in the record that might arguably support the appeal." *Anders*, 386 U.S. at 744. For purposes of California law, an issue is "arguable" when it has some potential for success, meaning some possibility of a result requiring reversal or modification of the judgment. *People v. Johnson*, 123 Cal.App.3d 106, 109 (1981).

[6] The two issues identified by the district court - (1) whether the denial of Robbins's attempt to withdraw the waiver of his right to counsel constituted error; and (2) whether the inadequacy of the county jail's library deprived him of a meaningful opportunity to prepare his defense - are arguable and should have caused the state appellate court to appoint new counsel for Robbins.[3] As noted by the district court:

> The right guaranteed by the Fourteenth and Sixth Amendments to waive one's right to counsel and proceed in pro per "is premised upon the right of the defendant to make a defense. *Milton v. Morris*, 767 F.2d 1443, 1445-46 (9th Cir. 1985) (citing *Faretta v. California*, 422 U.S. 806, 819-20 (1975)). An incarcerated defendant cannot meaningfully exercise this right without access to tools such as law books. *Id.* at 1446; *Taylor v. List*, 880 F.2d 1040, 1047 (9th Cir. 1989).

The California trial judge's own words - "it's almost impossible as a pro per to prepare yourself a decent defense, especially given the law library" - justify the district court's conclusion that Robbins's inability to prepare an adequate defense was, in the very least, an arguable issue. The California trial judge even told Robbins that "if you are looking up law, you are not going to be able to find it because somebody has torn it out before you got there." There is some potential, had Robbins's appointed counsel raised and vigorously

3. Because we conclude that the district court correctly identified at least two arguable issues, we need not determine whether other arguable issues exist.

advanced this issue on appeal, that Robbins's conviction would have been reversed.

As the district court noted, the California trial court's treatment of Robbins's request to withdraw his waiver of his right to counsel also raises a serious constitutional question. The district court stated, "[f]airly read, petitioner asked for the appointment of counsel as an alternative to advisory counsel. Because the judge failed to even consider whether petitioner was reasserting his right to counsel, it too is a nonfrivolous issue which should have been raised by petitioner's appellate counsel." We agree.

[7] Finally, the State argues that granting relief on Robbins's *Anders* claim violates *Teague v. Lane*. *Teague* held that new constitutional rules cannot be applied retroactively to cases on collateral review unless they fall into one of two narrow exceptions. It is clear, however, that the district court's holding in this case did not involve a new rule. Our discussion above indicates that the outcome of Robbins's case was pre-determined by the controlling analysis provided by the Supreme Court in *Anders* and *Penson*, both of which were handed down before Robbins's conviction. Likewise, the California Supreme Court's decision in *Feggans*, which is cited approvingly in *Wende*, compels the result in this case and was decided before Robbins's conviction. The consequences of counsel's failure to raise arguable issues were unambiguously detailed in *Anders* and *Feggans*. Application of *Anders* and *Feggans* to this case required no extension of precedent or logical interpolation. The facts of Robbins's case almost directly mirror those of *Anders*. Accordingly, no "new" constitutional rule was invoked in this case.

IV. Robbins's Cross-Appeal

Robbins argues in his cross-appeal that the district court erred when it failed to consider and to rule upon his allegations of constitutional error in the state court trial.

[8] Robbins brought eleven exhausted claims in the district court relating to his trial. Had Robbins not raised the *Anders* issue, the district court would have reached the merits of those claims. Had the district court ruled in Robbins's favor on them, a grant of habeas relief would have required either release or a new trial. The need for a new direct appeal - the remedy granted by the district court - would be obviated by this outcome. Robbins is entitled to have these foundational claims in his habeas petition considered first.

[9] The Eleventh Circuit has, in the exercise of it supervisory authority, directed district courts to rule on all claims raised in a petition for habeas corpus, even if the petition is granted on one claim. *Clisby v. Jones*, 960 F.2d 925, 936 (11th Cir. 1992) (en banc). This has the advantage of avoiding possible remands for consideration of remaining claims if the district court's decision on one claim is reversed. It has the disadvantage of requiring considerable extra work by the district court to decide many claims that may be completely unnecessary, because they will be mooted on appeal.

[10] We have taken a different approach in our circuit. In *Blazak v. Ricketts*, 971 F.2d 1408, 1413 (9th Cir. 1992) (per curiam), we declined to apply the *Clisby* approach to a capital case in which the district court granted the writ on one guilt phase issue without deciding all the remaining guilt phase issues or any of the penalty

phase issues. We drew a distinction, however, between a case which granted a petition on a sentencing issue but left unresolved an issue affecting the validity of the conviction. *Id.* at 1413-14. We stated:

> Moreover, unlike habeas grants exclusively on sentencing issues, the grant of a habeas petition because of the constitutional invalidity of a conviction raises concerns that a possibly innocent person has been unjustifiably incarcerated on death row for a number of years. Delaying retrial in such cases, while attorneys fight over a sentence that may no longer exist, risks the perpetuation of a monumental injustice, should retrial ultimately result in an acquittal.

Id. at 1414 n.7. The same policy considerations are involved in this case. Granting the writ only for the ineffective assistance of counsel on appeal leaves the challenges underlying the conviction unresolved. Resolving other issues while leaving challenges to the underlying conviction unresolved potentially can cause grave injustice to defendants like Robbins who, despite alleging constitutional shortcomings in the trial process, must await resolution of a renewed appeal while potentially deserving a retrial and possibly an acquittal.

Penson v. Ohio, cited by California in opposition to Robbins's claim, is inapposite. Penson was an indigent defendant who was convicted of several serious felonies. His appointed appellate counsel filed a letter brief certifying his appeal to be meritless and asking to withdraw. In violation of *Anders*, the Ohio Court of Appeals allowed counsel to withdraw and conducted its

own review of the record without the benefit of advocacy or briefing. *Penson*, 488 U.S. at 78. The Ohio court found "several arguable claims," reversed one of his convictions, and then dismissed his appeal. *Id.* at 79. Penson petitioned for a writ of certiorari. The Supreme Court granted the petition and reversed.

[11] *Penson* is unlike the case at bar because it involved the Supreme Court's review of the Ohio appellate court's dismissal of Penson's direct appeal. When the Court recognized that "several arguably meritorious grounds for reversal" existed, it remanded the matter to the Ohio appellate court for further proceedings. *Id.* It was, however, reviewing the direct appeal of a state court action, and not a habeas petition. In this circumstances, the Court explained that it would not "sit in place of the Ohio Court of Appeals *in the first instance* to determine whether petitioner was prejudiced as to any appellate issue." *Id.* at 87 n.9 (emphasis added.) In this habeas proceeding the district court will be considering alleged constitutional errors in the defendant's trial that have been exhausted in the state court. Robbins is entitled to have those trial issues considered at this time just as any other habeas petitioner would. The fact that Robbins also presents an allegation of ineffective assistance of appellate counsel is a secondary issue that comes into play only if the district court denies relief for trial errors. That appeal would then be a renewal of the direct appeal as in *Penson* and could encompass any issues that could have been raised on direct appeal.

[12] Because the district court should have addressed the claims of trial error first, it might not have needed to address Robbins's claim of appellate error as well. Because it did address the appellate claims, however, and

because it decided those questions correctly, it is in the interest of judicial economy and efficiency to affirm them now. If trial error is found to have occurred and to require vacation of the conviction, the appellate errors will become immaterial. If no such trial errors are found, however, the district court's original order will again become applicable. *Cf. Penson*, 488 U.S. at 88-89 (the actual or constructive denial of assistance of counsel is presumed to result in prejudice); *Lombard*, 868 F.2d at 1487 (formal physical presence of appellate attorney is not appellate counsel; defendant constructively denied assistance of counsel where attorney filed document containing no arguments going to merits of appeal).

V. CONCLUSION

The judgment of the district court is **AFFIRMED IN PART** but the case is **REMANDED** to the district court for consideration of whether the alleged constitutional trial errors that defendant raises merit reversal of Robbins's underlying convictions and the granting of a new trial.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT SOUTHEAST J	HON. JOHN A. TORRIBIO, JUDGE
THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. LEE ROBBINS, Defendant.	) NO. A481636

REPORTER'S TRANSCRIPT OF PROCEEDINGS
MARSDEN HEARING
DECEMBER 20, 1989

APPEARANCES:

FOR THE PEOPLE:

IRA REINER, DISTRICT ATTORNEY
BY: ROBERT SAMOIAN, DEPUTY
TIA GRAVES, DEPUTY
12720 Norwalk Boulevard
Norwalk, California 90650-0415

FOR THE DEFENDANT:

WILBUR F. LITTLEFIELD
PUBLIC DEFENDER
BY: RALPH SEIFER, DEPUTY
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MAVIS R. DEL VECCHIO, CSR #1364
OFFICIAL REPORTER

NORWALK, CALIFORNIA; WEDNESDAY,

DECEMBER 20, 1989; 10:24 A.M.

DEPARTMENT SOUTHEAST J HON. JOHN A. TORRIBIO, JUDGE

APPEARANCES:

THE DEFENDANT WITH HIS COUNSEL, RALPH SEIFER, DEPUTY PUBLIC DEFENDER

MAVIS R. DEL VECCHIO, OFFICIAL REPORTER

THE COURT: OKAY. MR. ROBBINS IS PRESENT. MR. ROBBINS IS PRESENT BEFORE THE COURT. THE DISTRICT ATTORNEY'S STAFF HAS VACATED. MR. ROBBINS WAS ARRAIGNED YESTERDAY AND ASKED AT THAT TIME TO HAVE A CONVERSATION WITH THE COURT REGARDING REPRESENTATION BY MR. SEIFER. DUE TO THE CONGESTED CALENDER, I PUT IT OVER TO THIS MORNING.

MR. ROBBINS, PROCEED.

THE DEFENDANT: YOUR HONOR, I BELIEVE THERE IS A CONFLICT OF INTEREST BETWEEN MYSELF AND THE PUBLIC DEFENDER'S OFFICE IN REGARDS TO THIS CASE. MY INSTRUCTIONS HAVE NOT BEEN FOLLOWED I HAVE GIVEN TO MR. SEIFER REGARDING THE CASE.

THE COURT: WHAT ARE THE INSTRUCTIONS YOU HAVE GIVEN HIM?

THE DEFENDANT: UH -- MR. SEIFER INTRODUCED A --

THE COURT: EXCUSE ME. WHAT ARE THE INSTRUCTIONS HAVE YOU GIVEN HIM? YOU TELL ME THINGS AND I WILL ASK QUESTIONS AND THEN IT WILL MAKE --

THE DEFENDANT: WHAT INSTRUCTIONS HAVE I GIVEN HIM?

THE COURT: YES.

THE DEFENDANT: I INSTRUCTED TO -- TO HAVE EVIDENCE SUPPRESSED THAT WAS ILLEGALLY OBTAINED HE INTRODUCED AT THE PRELIMINARY, AT THE INSTRUCTIONS --

THE COURT: IN OTHER WORDS, HE MADE A LEGAL DECISION THAT YOU DISAGREED WITH?

THE DEFENDANT: YES, SIR.

THE COURT: OKAY. ANYTHING ELSE?

THE DEFENDANT: HE HAS FAILED TO FILE A DISCOVERY MOTION I INSTRUCTED HIM TO FILE. HE HAS STATED THAT THE PROSECUTOR WOULD BE COOPERATING WITH HIM, BUT WHICH HAS NOT BEEN THE CASE.

THE COURT: OKAY.

THE DEFENDANT: HE'S HAD ME TRANSPORTED TO COURT LAST TIME, SO HIM AND MR. WEBB COULD TRY TO GET ME TO ACCEPT AN OFFER THE PROSECUTOR MADE

WHICH WAS AGAINST MY INSTRUCTIONS. I HAD ALREADY REFUSED THE OFFER.

THE COURT: WHAT WAS THE OFFER THAT WAS GIVEN TO YOU?

THE DEFENDANT: A SIX-YEAR DEAL.

THE COURT: AND WHAT IS THE PRESENT CHARGE AGAINST YOU, MR. ROBBINS?

THE DEFENDANT: IT IS --

MR. SEIFER: 187 AND ONE COUNT OF 487, YOUR HONOR.

THE COURT: 187 SECOND DEGREE OR FIRST DEGREE?

MR. SEIFER: FIRST DEGREE, YOUR HONOR.

THE COURT: OKAY. NEXT THING, MR. ROBBINS?

THE DEFENDANT: HE'S REPEATEDLY REFUSED TO GIVE ME COPIES OF REPORTS AND DEPOSITIONS AND SUCH, AND FINALLY JUST FLAT REFUSED TO GIVE ME ANY COPIES OF IT.

I WISH TO HAVE THE INFORMATION, SO I COULD REVIEW THE REPORTS AND SEE WHAT WAS GOING ON IN REFERENCE TO MY CASE. I HAVE BEEN MORE OR LESS KEPT IN THE DARK REGARDING IT AT THIS POINT.

THE COURT: WELL, EXCUSE ME. YOU APPEARED IN SUPERIOR COURT FOR THE FIRST TIME YESTERDAY, SO MR. SEIFER RECEIVED THE TRANSCRIPTS FOR THE FIRST TIME YESTERDAY. COULDN'T POSSIBLY GIVE IT TO YOU TILL HE HAS READ IT.

MR. SEIFER: MR. ROBBINS HAS READ IT BEFORE I DID, YOUR HONOR. I GAVE IT TO HIM YESTERDAY MORNING WHILE HE WAS WAITING TO COME OUT FOR ARRAIGNMENT AND I -- I GAVE HIM MY COPY TO READ, NOT TO KEEP. AND HE DID NOT READ IT YESTERDAY MORNING.

THE DEFENDANT: I WAS REFERRING TO MOST OF THE OTHER REPORTS.

THE COURT: THERE ARE NO OTHER DEPOSITIONS BESIDES -- I USE "DEPOSITION' FOR A TRANSCRIPT, TESTIMONY. BUT THAT'S THE ONLY FILE, ONLY TRANSCRIPT THAT'S AVAILABLE THAT NORMALLY OCCURS IN A CRIMINAL CASE.

ANY OTHER TRANSCRIPTS OF ANY TYPE, MR. SEIFER?

MR. SEIFER: YOU HONOR, THERE ARE NO DEPOSITIONS OR TRANSCRIPTS. THERE ARE --

THE COURT: EXCUSE ME, GENTLEMEN. COULD YOU JUST --

MR. SEIFER: THERE IS A NUMBER OF ARREST REPORTS AND POLICE REPORTS. THIS CASE GOES BACK TO NEW YEAR'S OF 19 -- LAST NEW YEAR'S, YOUR HONOR, AND THERE HAS BEEN EXTENSIVE POLICE INVESTIGATION. I

GAVE MR. ROBBINS A COPY FOR HIS OWN -- FOR HIS OWN USE OF ONE OF THE SUPPLEMENTAL REPORTS. I HAVE NOT GIVEN HIM THE MAIN REPORT, HOWEVER, WHICH IS, I THINK, 75 OR A HUNDRED PAGES.

THE COURT: WELL, I CAN'T TELL YOU TO GIVE THE REPORT TO HIM, BUT I WOULD SUGGEST PERHAPS YOU GIVE THE REPORT TO HIM.

ANYTHING ELSE, MR. ROBBINS?

THE DEFENDANT: UM -- HE'S DISCUSSED THE CASE WITH OTHER PUBLIC DEFENDERS, WHICH I DIDN'T WISH THE CASE TO BE DISCUSSED.

THE COURT: EXCUSE ME. I AM GOING TO STOP YOU RIGHT THERE. HE WOULD BE A FOOL NOT TO DISCUSS THE CASE WITH OTHER PUBLIC DEFENDERS. ONE OF THE GREAT BENEFITS OF BELONGING TO THE LOS ANGELES

COUNTY PUBLIC DEFENDER'S OFFICE IS THE NUMBER OF CAPABLE LAWYERS THAT ARE IN THAT OFFICE THAT YOU CAN DISCUSS YOUR CASES WITH AND DISCUSS STRATEGIES AND METHODS OF APPROACH AND METHODS OF PROPERLY REPRESENTING YOUR CLIENTS, AND SO IF THAT -- IF THAT OFFENDS YOU, THAT IS TOO BAD.

THERE IS NOTHING -- IN FACT HE WOULD BE DERELICT TO SIT DOWN IN THAT OFFICE WITH 10 OTHER LAWYERS THAT HAVE COMBINED TWO OR THREE HUNDRED JURY TRIALS BETWEEN THEM AND SIT THERE AND NOT SAY TO SOMEBODY, I HAVE THE FACTS. THESE ARE THE FOLLOWING FACTS. WHAT DO YOU THINK ABOUT THIS? THAT'S THE ONE THING THAT THE PUBLIC DEFENDER HAS OVER ANY OTHER DEFENSE LAWYER IN THE UNITED STATES, IS THE ABILITY TO SIT DOWN WITH

PEOPLE THAT CARE ABOUT YOUR CASE AND TALK TO YOU ABOUT IT. 'CAUSE THE PRIVATE PRACTITIONER JUST HAS TO TALK TO GUYS ON A CATCH AS CATCH CAN BASIS. SO THAT YOU MAY NOT LIKE IT, BUT IF HE DOESN'T DO THAT, PERSONALLY I FIND HIM PRACTICING BELOW THE STANDARD OF PRACTICE.

SO WHAT'S THE NEXT THING?

THE DEFENDANT: THE WEP -- THE MURDER WEAPON IN THE CASE, THE EVIDENCE WAS TAMPERED WITH. MR. SEIFER DOESN'T SEEM TO FEEL VERY CONCERNED ABOUT THAT.

THE COURT: SEE, YOU CAN MAKE ACCUSATIONS ALL YOU WANT. IN FACT, THAT IS WHAT YOU HAVE DONE, IS MADE A LOT OF ACCUSATIONS HERE, NONE OF WHICH MAKE MUCH SENSE, BECAUSE THEY ARE ALL ARGUMENTATIVE.

YOU SAID THE WEAPON HAS BEEN TAMPERED THIS. WELL, THAT IS AN INTERESTING COMMENT, BECAUSE PART OF THE PROBLEM -- BECAUSE THE ONLY WAY YOU CAN ASSERT THAT IS IF YOU GET ON THE STAND AND SAY IT HAS BEEN TAMPERED WITH. HE MAY NOT -- HE MAY NOT WANT YOU TO DO THAT, HE MAY NOT WANT YOU TO TAKE THE STAND. I KNOW THE MURDER WEAPON, BECAUSE IT HAS BEEN TAMPERED WITH. BECAUSE DOING THAT, YOU MAY CONNECT YOURSELF WITH A MURDER WEAPON YOU DON'T HAVE YOURSELF CONNECTED WITH.

THE DEFENDANT: I AM REFERRING TO THE REPORTS. THE WEAPON, WHEN IT WAS CONFISCATED -- IT WAS HANDGUN -- HAD A SCOPE ON IT AND GRIPS. WHEN IT WAS PRESENTED AT THE PRELIMINARY, THERE WAS

NO SCOPE ON IT AND ONE OF THE GRIPS WAS MISSING FROM IT.

THE COURT: YOU CALL THAT TAMPERED WITH?

THE DEFENDANT: IT WAS ALTERED.

THE COURT: OKAY. NEXT COMPLAINT, MR. ROBBINS.

THE DEFENDANT: THERE IS NUMEROUS THINGS I FEEL THAT SHOULD HAVE BEEN INVESTIGATED IN THE CASE.

THE COURT: WHAT ARE THEY, MR. ROBBINS?

THE DEFENDANT: AT THE CRIME SCENE, THE NEXT-DOOR NEIGHBORS HAD DISTINCTLY HEARD THE GUN FIRE BETWEEN THE MURDERER AND THE VICTIM. THEY COMMENT TO, I BELIEVE IT IS, MR. SEIFER THAT IT WAS STRANGE THEY DIDN'T HEAR THE DOG BARKING, WHICH WOULD INDICATE THAT THE

PERSON, THE MURDERER WAS EITHER WELL KNOWN TO THE PEOPLE, TO -- YOU KNOW, WAS WELL KNOWN TO THEM OR IN FACT MURDERER WAS ALREADY THERE AND WAS LEAVING WHEN THEY HAD THE SHOOT-OUT.

THE COURT: THAT IS ARGUMENT. THAT IS NOT EVIDENCE. THAT IS SOMETHING YOU ARGUE TO THE JURY.

THE DEFENDANT: IT IS THINGS THAT MR. SEIFER --

THE COURT: WHAT WOULD YOU DO AS THE INVESTIGATOR? THE DOG IS NOT BARKING. YOU WANT THAT INVESTIGATED; IS THAT RIGHT. HOW DO YOU INVESTIGATE THAT? I AM JUST IDLY CURIOUS.

THE DEFENDANT: WELL, I EXPLAINED --

THE COURT: YOU HAVE ACCUSED THIS MAN OF BEING INCOMPETENT, NOT HAVING YOUR INTERESTS AT HEART, AND YOU HAVE

JUST SAID HE FAILED TO INVESTIGATE A DOG NOT BARKING. WELL, YOU HAVE ALREADY SAID THAT YOU HAVE GOT ALL THIS ADVICE AND SUGGESTIONS AND SPECIFIC INSTRUCTIONS TO HIM. WHAT SPECIFIC INSTRUCTION WOULD YOU GIVE TO HIM AS TO HOW TO INVESTIGATE A DOG NOT BARKING?

THE DEFENDANT: WELL, I EXPLAINED --

THE COURT: EXPLAIN IT TO ME RIGHT NOW.

THE DEFENDANT: YES, SIR. I EXPLAINED TO HIM THAT THE DOG WAS -- HAD SUFFERED FROM -- I BELIEVE IT IS CALLED PARVO -- AS A PUPPY, AND IT HAD -- HAD -- IT WAS MENTALLY RETARDED. HE DID NOT CHECK WITH THE VET AS I SUGGESTED TO VERIFY THAT FACT.

THE COURT: IN THIS MATTER, CRIMINAL PROCEEDINGS ARE SUSPENDED. I HAVE A DOUBTS THAT THIS MAN IS MENTALLY

COMPETENT TO STAND TRIAL. I WILL APPOINT TWO DOCTORS ON MY OWN MOTION TO EXAMINE THE DEFENDANT. MAY I HAVE THE LIST, PLEASE.

I WILL APPOINT DR. MARVIN EISENBERG --

MR. SEIFER: IS THAT -- I AM SORRY. IS THAT AN I OR --

THE COURT: E-I-S-E-N-B-E-R-G.

-- AND A DR. JOHN MEAD TO EXAMINE THE DEFENDANT PURSUANT TO 1368 OF THE PENAL CODE TO DETERMINE HIS PRESENT MENTAL SANITY, WHETHER HE IS ABLE TO KNOW, UNDERSTAND THE NATURE OF THE CHARGES, AND COOPERATE WITH COUNSEL IN A RATIONAL MANNER. CRIMINAL PROCEEDING ARE SUSPENDED. RETURN DATE, JANUARY 24TH, 1990.

THE COURT DENIES THE MARSDEN MOTION. THE COURT SEES NOTHING TO INDICATE THAT MR. SEIFER HAS DONE NOTHING HE IS SUPPOSED TO DO.

I WOULD SUGGEST, MR. SEIFER, THAT JUST AS A MATTER OF -- WHAT? -- CLIENT RELATION YOU GIVE HIM ALL COPIES OF ANY AND ALL DOCUMENTS. I UNDERSTAND SOMETIMES THE PUBLIC DEFENDER'S OFFICE DOESN'T LIKE TO DO THAT, BUT OTHER THAN THAT, FOR THE RECORD, THE COURT IS WELL AWARE THE INFORMAL DISCOVERY POLICY OF THE NORWALK BRANCH OF THE LOS ANGELES DISTRICT ATTORNEY'S OFFICE, BOTH AS A TRIAL ATTORNEY IN THE AREA FOR 16 YEARS AND AS A JUDICIAL OFFICER FOR THE LAST 4 YEARS. IN MY TWENTY-PLUS YEARS OF EXPERIENCE WITH THIS COURTHOUSE, I'VE NEVER KNOWN OF A PROBLEM TO ARISE

PERSONALLY WHERE THE DISTRICT ATTORNEY HAS FAILED TO COMPLY WITH DISCOVERY, WHEN REQUESTED.

MR. SEIFER: JIM FAGAN IS THE D.A. ON THAT CASE

THE COURT: I KNOW -- I KNOW THAT ALL DISCOVERY -- THE COURT WILL INDICATE THAT MR. FAGAN IS PROBABLY -- I WON'T SAY THE MOST HONORABLE, BUT AS HONORABLE AS ANY OTHER PROSECUTOR IN THE UNITED STATES AND IN FACT IS FAMOUS FOR GIVING ALL BENEFICIAL EVIDENCE TO THE DEFENSE, WITHOUT THE NECESSITY OF REQUEST.

BUT PERHAPS, MR. SEIFER, IT WOULD BE BEHOOVE YOU AS A MATTER OF CAUTION TO FILE A MOTION.

THE MOTION IS DENIED, PLUS THE COURT HAS A DOUBT OF THE DEFENDANT IN

TERMS OF SANITY IN ORDER OF 1368. MOTION DENIED.

MR. SEIFER: THERE IS A 995 MOTION WHICH I BELIEVE THE COURT CALENDARED YESTERDAY FOR JANUARY.

THE COURT: I BELIEVE I CAN PROCEED ON THAT MOTION. I DON'T BELIEVE -- WHAT'S THE LAW ON THAT? I THINK THERE IS SOME MOTIONS YOU CAN KEEP DOING IF THEY RESULT IN THE CHARGE BEING DISMISSED. ISN'T THAT ONE OF THEM? WHY DON'T YOU CHECK WITH YOUR APPELLATE DEPARTMENT.

MR. SEIFER: RIGHT.

THE COURT: BECAUSE THE POINT IS IF HE HAS A VIABLE 995 --

MR. SEIFER: THE 1368 ISSUE GOES AWAY.

THE COURT: -- GOES AWAY.

MR. SEIFER: OF COURSE.

THE COURT: AND I THINK THAT THE LAW IS THAT YOU CAN GO -- WHERE THE MOTION WILL RESULT IN A BENEFIT TO THE DEFENDANT, YOU CAN -- I THINK YOU CAN PROCEED. WHY DON'T YOU CHECK WITH THE -- WE WILL LEAVE THAT DATE, IN ANY EVENT, AND IF IN FACT YOUR APPELLATE DEPARTMENT SAYS NO, WE WILL TAKE IT OFF CALENDAR.

MR. SEIFER: DID THE COURT --

THE COURT: THAT WOULD ENCOURAGE YOU TO GET THE PAPERS.

MR. SEIFER: IS THE COURT VACATING THE TRIAL DATE IN THIS CASE?

THE COURT: THE DATE IS VACATED.

MR. SEIFER: AND THE REPORT BEING ASKED FOR FROM DR. EISENBERG AND DR. MEAD, IF I MAY FOR THE RECORD, THAT IS A CONFIDENTIAL REPORT?

THE COURT: NO, 1368 REPORTS ARE NOT CONFIDENTIAL, BUT THEY CAN NOT BE USED FOR ANY PURPOSE BY THE PROSECUTION. THEY ARE FOR THE COURT'S BENEFIT, TO ENABLE THE COURT TO JUDGE THE PRESENT SANITY OF THIS INDIVIDUAL PURSUANT TO 1368 STANDARDS, SO THEY WILL BE TO THE COURT.

IN THAT REGARD, MR. SEIFER, I WOULD -- WE DON'T NEED THEM FOR ANYTHING ELSE. THAT IS NOT RELEVANT TO THE ISSUES. THEY DON'T NEED THE TRANSCRIPTS OR ANYTHING. SO THAT'S THE ORDER.

MR. SEIFER: THANK YOU, YOUR HONOR.

(PAUSE IN THE PROCEEDINGS.)

THE COURT: WAIT. WE BETTER SEE IF THE D.A. -- D.A. WASN'T PRESENT FOR THE 1368. THEY MIGHT WANT IN.

(THE FOLLOWING PROCEEDING WERE HELD IN OPEN COURT, THE DEFENDANT NOT BEING PRESENT BUT REPRESENTED BY COUNSEL, WITH THE PEOPLE BEING REPRESENTED BY ROBERT SAMOIAN AND TIA GRAVES, DEPUTIES DISTRICT ATTORNEY.)

THE COURT: THE COURT'S DECLARED A DOUBT UNDER 1368 AND APPOINTED TWO DOCTORS TO EXAMINE THE DEFENDANT.

WHAT WAS THE RETURN DATE ON THAT?

(THE CLERK AND THE COURT CONFER OFF THE RECORD.)

THE COURT: SET A RETURN DATE OF JANUARY 24. ALSO, IT IS MY UNDERSTANDING WE STILL COULD PROCEED WITH THE 995 MOTION. DO YOU KNOW WHAT THE LAW IS ON THAT? BECAUSE THAT COULD RESULT IN THE

CHARGES BEING DISMISSED. DOES ANYBODY HAVE ANY THOUGHTS ON THAT?

MS. GRAVES: YES. IN THE CASE THAT WE DID IN HERE WITH MR. FISHER ON CASPER, THERE WAS SOME CASE LAW AND I THINK I MIGHT BE ABLE TO DIG IT UP.

MR. SAMOIAN: SHE HAD THE CASE LAW

MS. GRAVES: AND IT WAS SOMEHOW RELATED TO 1368 AND 995 AND HOW IT FIT TOGETHER, SO I WILL SEE IF I CAN FIND SOMETHING.

MR. SEIFER: AND I WILL TRY AND GET A READING OUT OF DOWNTOWN ON THAT. THANK YOU.

THANK YOU.

(THE MATTER WAS CONTINUED TO JANUARY 24, 1998.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT SOUTHEAST J	HON. JOHN A.TORRIBIO, JUDGE
THE PEOPLE OF THE STATE OF CALIFORNIA,	) NO. A481636
Plaintiff,	) REPORTER'S CERTIFICATE
v.	)
LEE ROBBINS,	)
Defendant.	)

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

I, MAVIS R. DEL VECCHIO, OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES 1 THROUGH 11 COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE MARSDEN PROCEEDINGS TAKEN IN THE

MATTER OF THE ABOVE-ENTITLED CAUSE ON DECEMBER 20, 1989.

DATED THIS 11TH DAY OF NOVEMBER, 1990.

_____, CSR #1364
OFFICIAL REPORTER

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OFFICE OF THE PUBLIC DEFENDER
BY: RALPH L. SEIFER, DEPUTY
12720 Norwalk Boulevard
Norwalk, CA 90650
Telephone: (213) 807-7302
Attorney for Defendant

IN THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs LEE ROBBINS, Defendant,	Case No. A481636 MOTION FOR DISCOVERY

TO: THE DISTRICT ATTORNEY OF LOS ANGELES COUNTY:

PLEASE TAKE NOTICE THAT the above-named defendant by this attorney, RALPH L. SEIFER, will move the above-entitled court in Department "J" thereof on the 24th day of January , 1990, at the hour of

9:00 A.M., or as soon thereafter as counsel can be heard, for an order of this court directing you to make available to defendant's attorney for examination, copying, and/or hearing within seven judicial days of the filing of such order, any and all of the following items, facts, or information which are in the actual or constructive possession of you or any of your deputies, investigators, employees, or agents including, but not limited to, such of the following items which are available to your or any such deputies, investigators, employees, or agents, and are in the possession of members of any police or sheriff's department or of any other state or federal law enforcement agency.

Defendant additionally moves that the court's discovery order be continuing and that it direct each of the above-noticed persons and agencies to make diligent, good faith efforts obtain, preserve, and make available the following items:

1. All statements or utterances by defendant relative to this case, whether oral, written, or videotaped, signed or unsigned, regardless of the method of recording or preservation, and regardless of whether different recordings or preservations of the statements are duplicates, including, but not limited to, statements preserved by memory, whether or not reduced to writing. This shall include, but not be limited to:

a. All statements or utterances by defendant made after arrest any law enforcement personnel, or overheard by and law enforcement personnel; including, but not limited to, letters written by the defendant from the Los Angeles County jail, and statements received as a result of electronic listening devices, or other eavesdropping or surveillance methods used, during defendant's incarceration, detention, or interrogation by any police agencies or the Sheriff of Los Angeles County;

b. All statements or utterances by defendant made to any persons who are witnesses to the alleged

crimes or are potential witnesses in the prosecution of this case. This shall include, but not be limited to, any persons known by law enforcement personnel to have had conversations with defendant while incarcerated by those law enforcement agencies. [Brady v. Maryland (1963) 373 U.s. 83; Powell v. Superior Court (1957) 48 Cal.2d 704, 707-09; People v. Carter (1957) 48 Cal.2d 737, 752-53; Vance v. Superior Court (1958) 51 Cal.2d, 93-94; Cash v. Superior Court (1959) 53 Cal.2d 72, 75-76; Craig v. Superior Court (1976) 54 Cal.App.3d 416, 423-24; McAllister v. Superior Court (1958) 165 Cal.App.2d 297, 300.]

SO ORDERED [ ]
DENIED [ ]
ORDERED AS MODIFIED:

XXXXXXXXXXXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXX

XXXXXX XXXXXXX
XXXXXX XXXXXXX
XXXXXXXXXX XXXXXXX

2. The names, addresses, and telephone numbers of all individuals who have filed complaints relating to acts of aggressive behavior, violence and/or attempted violence, excessive force and/or attempted excessive force, or other improper tactics by [police or sheriff's officers who participated in defendant's post-arrest interrogation]; copies of any such complaints; copies of the investigative reports based on such complaints, including statements of witnesses interviewed, information concerning the officers' use of excessive force or violence, and statements of psychiatrists, psychologists or other officers contained in the personnel files of the above-named officers or in the possession.

10. All notes and memoranda, of any kind, handwritten or typed, and all reports made by any law enforcement personnel relating to those statements described in paragraphs 1, 2, and 9 above.

[People v. Ruthford (1975) 14 Cal.3d 399, 405-06; Funk v. Superior Court (1959) 52 Cal.2d 423, 424; People v. Renchie (1962) 201 Cal.App.2d 1, 4-5.]

SO ORDERED [ ]
DENIED [ ]
ORDERED AS MODIFIED:

11. The complete criminal record ("rap sheet") of the defendant.

[Joe v. Superior Court (1970) 3 Cal.3d 797; In re Ferguson (1971) 5 Cal. 525; People v. Beagle (1972) 6 Cal.3d 441; People v. Garner (1961) 57 Cal.2d 135; Hill v. Superior Court (1974) 10 Cal.3d 812; Engstrom v. Superior Court (1971) 20 Cal.App.3d 240; People v. Campbell (1972) 27 Cal.App.3d 849.]

12. The criminal record of all witnesses who may be called to testify at the trial of this case.

[People v. Alexander (1983) 140 Cal.Ap..3d 647, 659.]

SO ORDERED [ ]
DENIED [ ]
ORDERED AS MODIFIED:

13. The date, place, and nature of all prior felony convictions of (1) the defendant, and (2) all witnesses who may be called to testify at the trial of the case.

[Hill v. Superior Court (1974) 10 Cal.3d 812; In re Ferguson (1971) 5 Cal.3d 525; Engstrom v. Superior Court (1971) 20 Cal.App.3d 240; Evidence Code section 788.]

14. All records concerning arrests of the alleged victim for specific acts of aggression, together with the names and addresses of all witnesses to such acts.

Engstrom v. Superior Court (1971) 20 Cal.App.3d 240.]

SO ORDERED [ ]
DENIED [ ]
ORDERED AS MODIFIED:

15. As to (1) this defendant, (2) all witnesses who may be called to testify at the trial of this case, all pending criminal charges against such persons anywhere in the State of California, all information regarding the current parole and/or probation status of such persons, and all arrests, criminal charges, ongoing criminal investigations, or actions pending anywhere in the State of California since the date of the alleged offense charged in the Information.

20. All reports and records of all chemical, biological, medical, criminological, laboratory, or other testing and examination of any physical evidence obtained in the investigation of this case, including, but not limited to, the victim's body, bodily fluids and/or clothing, and the defendant's body, bodily fluids and/or clothing, and samples of any such remaining fluids or specimens.

Any written reports, notes, tape recordings or other records or documents used or completed in the course of such testing and examination shall be preserved and a coy provided to defense counsel, together with the name, address and telephone number of all persons who conducted or performed any such test, examination or analysis, or who reviewed it in an attempt to arrive at an expert opinion, with a copy of each person's report, evaluation, review and/or analysis.

[People v. Johnson (1974) 38 Cal.App.3d 288, 234-36; Norton v. Superior Court (1959) 173 Cal.App.2d 133; Schindler v. Superior Court (1958) 161 Cal.App.2d 513; Walker v. Superior Court (1957) 155 Cal.App.2d 134.]

SO ORDERED [ ]
DENIED [ ]
ORDERED AS MODIFIED:

21. The results of all laboratory tests by any investigative laboratory or law enforcement agency concerning examination of physical, photographic or written evidence connected with the investigation of any aspect of this case, together with all written reports regarding such tests.

[Walker v. Superior Court (1957) 155 Cal.App.2d 134, 138, 140.]

SO ORDERED [ ]
DENIED [ ]
ORDERED AS MODIFIED:

22. All psychiatric, psychological, or social evaluations or studies of the victim(s) which tend to show a propensity for violence.

[Ballard v. Superior Court (1966) 64 Cal.2d 159; People v. Dena (1972) 25 Cal.App.3d 1001.]

SO ORDERED [ ]
DENIED [ ]
ORDERED AS MODIFIED:

23. Prints or slides of all photographs or videotapes taken of the defendant in connection with the alleged offense, together with the date each photograph or videotape was taken and the name and address of the person who took it.

[People v. Ruthford (1975) 14 Cal.3d 399, 405-09; Norton v. Superior Court (1959) 173 Cal.App.2d 133, 136.]

SO ORDERED [ ]
DENIED [ ]
ORDERED AS MODIFIED:

24. Prints of all photographs or slides, including any technician's diagrams, taken of the scene of the alleged crimes or the victims of the alleged crimes, or otherwise relating to the case, including the date when each photograph was taken, and the name and address of the person who took or prepared it.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,	NO. A481636
Plaintiff,	DECLARATION IN SUPPORT OF MOTION
v.	FOR DISCOVERY
LEE ROBBINS,	
Defendant.	

I RALPH L. SEIFER , declare as follows:

I am the attorney for the defendant in the above-entitled action.

This matter is now set for further proceedings in Department "J" of the above-entitled Court on Jan. 24, 1990, at the hour of 9:00.

An investigation of the charges alleged against the defendant has been made by officers or agents of the District Attorney of Los Angeles County and other law enforcement agencies.

Declarant is informed and believes that these law enforcement agencies have in their possession or under their control some or all of the information described in the Motion for Discovery served and filed herewith; that it is necessary that such information be made available to the defendant and his counsel in order to prepare for trial; that the information requested is material and relevant to the trial of this action, is under the control of the aforementioned agencies, and is not known to the defendant or his counsel; and that the trial or other disposition of this case will be expedited by the prompt disclosure of such information to the defendant and his counsel.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed on , 1990 at Norwalk, CA.

_____
Attorney for Defendant
RALPH L. SEIFER

ORDER

It appearing to this Court from the declaration of [name], counsel for defendant, that there are in your possession or under your control certain items relevant to this action, and good cause appearing therefor;

IT IS HEREBY ORDERED that the District Attorney of LOS ANGELES County make available to defense counsel and/or his representative on or before the hour of on , 19 , each of the items ordered by this Court as indicated above.

IT IS FURTHER ORDERED that this Order be deemed a continuing and on-going order through the completion of trial, so that any items granted by this order, which are actually or constructively obtained by or become known to the District Attorney of Los Angeles County or any of his deputies, investigators, employees, or agents after initial compliance with this Order has been made, shall also be made available forthwith to defense counsel.

IT IS FURTHER ORDERED that the District Attorney of Los Angeles County or any of his deputies, investigators, employees, or agents, and any police or sheriff's department or other state or federal law enforcement agency, shall preserve each of the items ordered by this Court until defense counsel or his investigator has had a reasonable opportunity to inspect and copy them.

Failure to comply with the above Order may be punishable by contempt or court.

DATED:

_____

JUDGE OF THE SUPERIOR COURT

NORWALK CALIFORNIA;

WEDNESDAY, JANUARY 24, 1990*

10:25 A.M.

DEPARTMENT SE J HON. C. ROBERT SIMPSON, JR., JUDGE

APPEARANCES:

THE DEFENDANT WITH HIS COUNSEL, RALPH SEIFER, DEPUTY PUBLIC DEFENDER OF LOS ANGELES COUNTY; THE PEOPLE BEING REPRESENTED BY JAMES FAGAN, DEPUTY DISTRICT ATTORNEY OF LOS ANGELES COUNTY, THE FOLLOWING PROCEEDING WERE HELD:

(KATHLEEN H. ADAMS, OFFICIAL REPORTER.)

THE COURT: LET THE RECORD SHOW THAT MR. ROBBINS IS IN THE COURTROOM.

LEE ROBBINS, IS THAT YOUR TRUE AND CORRECT NAME?

THE DEFENDANT: YES, SIR.

THE COURT: MR. ROBBINS IS REPRESENTED BY THIS ATTORNEY, MR. SEIFER OF THE PUBLIC DEFENDER'S OFFICE, AND MR. FAGAN OF THE DISTRICT ATTORNEY'S OFFICE IS REPRESENTING THE PEOPLE.

MR. FAGAN.

MR. FAGAN: YOUR HONOR, CRIMINAL PROCEEDINGS HAVE BEEN SUSPENDED. WE ARE AWAITING THE ARRIVAL OF THE REPORTS FROM THE TWO DOCTORS, WHICH APPARENTLY HAVE NOT COME TO THE COURT FILE AS OF YET. I DON'T KNOW THAT WE CAN DO ANYTHING ABOUT THIS MATTER UNTIL THOSE REPORTS ARE FORWARDED.

THE COURT: CRIMINAL PROCEEDINGS HAVE BEEN SUSPENDED?

MR. FAGAN: YES, YOUR HONOR.

THE COURT: HOW LONG AGO WERE THE REPORTS REQUESTED?

MR. SEIFER: WELL, YOUR HONOR, JUDGE TORRIBIO DECLARED A DOUBT ON DECEMBER 19TH IF MY FILE IS CORRECT. I HAVE JUST SPOKEN WITH MR. ROBBINS.

UNDER 1368(A), HE IS TO BE SEEN BY TWO PSYCHIATRISTS. HE HAS BEEN SEEN ONLY BY ONE. I DON'T KNOW -- HE DOESN'T RECALL THE GENTLEMAN'S NAME. HE SAYS IT WAS AN OLDER MAN BY --

THE COURT: I WOULD BE INCLINED TO AGREE WITH MR. FAGAN THERE IS PROBABLY NOTHING WE CAN DO UNTIL WE GET THAT OTHER REPORT IN AND WE SHOULD PROBABLY CONTINUE THE MATTER FOR A COUPLE OF WEEKS.

MR. SEIFER: APPARENTLY WE DON'T HAVE EITHER REPORT AND HE HAS ONLY BEEN BY ONE OF THE TWO DOCTORS.

THE COURT: NEITHER REPORT IS IN?

MR. SEIFER: NEITHER.

THE COURT: WHAT IS YOUR SUGGESTION?

MR. FAGAN: PERHAPS MR. SEIFER CAN CONTACT THE DOCTORS.

MR. SEIFER: I PREFER TO HAVE THE CLERK CONTACT [illegible] DOCTORS IF THAT'S NOT --

THE CLERK: YOUR HONOR, I HAVE GOT ENOUGH WORK TO DO.

THE COURT: YOU RATHER HAVE COUNSEL DO IT?

THE CLERK: YES, SIR.

MR. SEIFER: ALL RIGHT.

I WILL CONTACT THE DOCTORS. I WILL HAVE TO GET THEIR NAMES OUT OF THE COURT FILE, BUT I WILL DO THAT.

THE COURT: SHOULD WE PUT IT OVER FOR 30 DAYS?

MS. FAGAN: I WOULD PREFER, YOUR HONOR, LET'S SAY THREE WEEKS. THAT SHOULD BE ENOUGH.

THE COURT: ALL RIGHT.

THIS MATTER IS CONTINUED FOR THE RECEIPT OF DOCTORS' REPORTS UNTIL FEBRUARY 14TH, 1990.

MR. SEIFER: YOUR HONOR, THERE IS ONE OTHER THING IN THIS CASE. WE HAVE HAD A NUMBER OF MARSDEN MOTIONS. I DON'T KNOW IF THIS COURT IS ACQUAINTED WITH A MARSDEN MOTION.

THE COURT: YES.

MR. SEIFER: OKAY.

AT THE LAST APPEARANCE HERE ON DECEMBER 19TH, WE HAD A MARSDEN MOTION. AND IN CONJUNCTION WITH THAT, ONE OF THE

ITEMS THAT -- ONE OF THE AREAS THAT MR. ROBBINS HAD SOME DIFFICULTY WITH WAS THE FACT THAT I HAD NOT FILED A FORMAL DISCOVERY MOTION ON HIS BEHALF.

I DISCUSSED THE MATTER WITH JUDGE TORRIBIO AT THAT TIME. I TOLD JUDGE TORRIBIO THAT THE POLICY HERE IN NORWALK, DISTRICT ATTORNEYS -- IT IS KIND OF UNWRITTEN POLICY, BUT I'VE ALWAYS -- WHENEVER THERE HAS BEEN SOME DIFFICULTY WITH DISCOVERY, THE DISTRICT ATTORNEY HAS SAID THAT I CAN COME TO THEIR OFFICE AND LOOK THROUGH THEIR FILE.

THE COURT: DO YOU WANT THE DISTRICT ATTORNEY TO BE EXCUSED DURING THIS DISCUSSION?

MR. SEIFER: NO, YOUR HONOR, ABSOLUTELY NOT.

I EXPLAINED TO JUDGE TORRIBIO THAT MR. FAGAN WAS THE DISTRICT ATTORNEY ON MR. ROBBINS' CASE AND MR. FAGAN HAS TOLD ME -- AND I HAVE THE HIGHEST REGARD FOR MR. FAGAN AND WHATEVER HE HAS TO SAY. MR. FAGAN HAS TOLD ME THAT I HAVE EVERYTHING THAT HE HAS IN CONNECTION WITH THIS CASE.

I EXPLAINED THAT TO JUDGE TORRIBIO, AND I HAVE NO REASON TO DOUBT THAT AND I AM NOT SUGGESTING OTHERWISE.

JUST AS A FORMALITY, JUDGE TORRIBIO SUGGESTED I FILE A DISCOVERY MOTION. I HAVE GIVEN JIM FAGAN A COPY OF THAT AND I HAVE A COPY HERE FOR THE COURT.

MR. FAGAN: YOUR HONOR, I HAVE RECEIVED THE DISCOVERY MOTION. I HAVE REVIEWED IT AND I WOULD CONCEDE THAT THE DEFENDANT IS ENTITLED TO EVERYTHING

THE DEFENDANT IS ENTITLED TO EVERYTHING THAT IS REQUESTED IN THE DISCOVERY MOTION.

I WOULD INDICATE FOR THE RECORD AT THIS POINT IN TIME I HAVE GIVEN MR. SEIFER EVERYTHING THAT I HAVE THAT WOULD BE COVERED IN THE DISCOVERY MOTION.

ADDITIONALLY, FOR THE RECORD, I AM SEEKING SOME ADDITIONAL INVESTIGATION THAT I HAVE NOT RECEIVED YET; AND AT SUCH TIME THAT I DO, I WILL PROVIDE A COPY TO MR. SEIFER.

THE COURT: VERY WELL.

MR. SEIFER: I ACCEPT THAT REPRESENTATION COMPLETELY, YOUR HONOR. THAT'S FINE.

MR. SEIFER: THREE WEEKS FROM TODAY, YOUR HONOR?

THE COURT: THREE WEEKS FROM TODAY IS FEBRUARY 14TH.

MR. SEIFER: AND THE 2-6 JURY TRIAL DATE WILL GO OFF CALENDAR THEN, YOUR HONOR?

MR. FAGAN: IT WILL HAVE TO BECAUSE CRIMINAL PROCEEDINGS HAVE BEEN SUSPENDED.

THE COURT: YES, THE CRIMINAL PROCEEDINGS SUSPENDED.

DO WE HAVE A TIME WAIVER?

MR. FAGAN: WE DON'T NEED ONE, YOUR HONOR, BECAUSE PROCEEDINGS HAVE BEEN SUSPENDED.

THE COURT: ALL RIGHT.

MR. SEIFER: I WILL MAKE AN EFFORT TO REACH BOTH PSYCHIATRISTS TODAY, YOUR HONOR.

THE COURT: VERY GOOD. THANK YOU, MR. SEIFER.

MR. SEIFER: THANK YOU, SIR.

THE COURT: YOU ARE REMANDED TO CUSTODY, MR. ROBBINS.

(AT 10:30 A.M., THE PROCEEDINGS WERE CONTINUED TO WEDNESDAY, FEBRUARY 14, 1990, AT 9:00 A.M.)

NORWALK, CALIFORNIA

THURSDAY, MARCH 1, 1990*

1:47 P.M.

DEPARTMENT SE J HON. C. ROBERT SIMPSON, JR., JUDGE

(APPEARANCES AS HERETOFORE NOTED.)

THE COURT: CALENDAR ITEM 210, IN THE MATTER OF LEE ROBBINS.

MR. ROBBINS IS IN CUSTODY. BRING HIM OUT.

(THE DEFENDANT ENTERS THE COURTROOM.)

THE COURT: MR. SEIFER, I NEED TO TAKE ANOTHER LOOK AT THE TWO LETTERS.

MR. SEIFER: YES, YOUR HONOR.

YOUR HONOR, I PREVIOUSLY GAVE A COPY OF THE LETTER FROM DR. EISENBERG TO JUDGE TORRIBIO. THAT WAS DATED JANUARY

10TH. I DON'T KNOW IF THAT IS THE ONE THE COURT HAS.

THE COURT: NO. I SAW THE SHORTER ONE THIS MORNING.

MR. SEIFER: FROM DR. MEAD?

THE COURT: YES.

MR. SEIFER: I HAVE THE ONE HERE FROM DR. EISENBERG. I DON'T KNOW IF MR. FAGAN HAS SEEN THIS OR NOT.

MR. FAGAN: IT'S FINE. SUBMIT IT.

THE COURT: GIVE ME JUST A MOMENT.

VERY WELL.

I HAVE READ THE LETTER DATED JANUARY 10 FROM DR. MARVIN EISENBERG ADDRESSED TO JUDGE TORRIBIO. I BELIEVE THIS MORNING THE LETTER I READ WAS FROM DR. MEAD.

MR. FAGAN: YOUR HONOR, IT IS MY UNDERSTANDING THAT MR. ROBBINS WISHES

TO SUBMIT THE RULING AS TO WHETHER OR NOT HE IS COMPETENT TO STAND TRIAL ON THE COURT READING THE REPORTS OF THE TWO DOCTORS.

IS THAT WHAT YOU WISH TO DO, MR. ROBBINS?

THE DEFENDANT: I AM SORRY, I DIDN'T HEAR.

MR. FAGAN: I SAID YOU ARE HERE TO DETERMINE WHETHER OR NOT YOU ARE COMPETENT TO STAND TRIAL OR NOT MENTALLY COMPETENT. IT IS MY UNDERSTANDING YOU WISH TO HAVE THE COURT READ THE REPORTS OF THE TWO DOCTORS AND MAKE A DETERMINATION BASED ON READING THOSE TWO REPORTS.

IS THAT WHAT YOU WANT TO DO?

THE DEFENDANT: THAT WOULD BE FINE, YOUR HONOR.

MR. FAGAN: MR. ROBBINS, YOU HAVE A RIGHT TO HAVE A JURY TRIAL TO DETERMINE WHETHER YOU ARE COMPETENT TO STAND TRIAL.

DO YOU UNDERSTAND THAT?

THE DEFENDANT: YES, SIR.

MR. FAGAN: DO YOU GIVE UP THAT RIGHT?

THE DEFENDANT: YES, SIR.

MR. FAGAN: YOU HAVE A RIGHT TO CONFRONT AND CROSS-EXAMINE THE WITNESSES AGAINST YOU. THAT MEANS YOU HAVE A RIGHT TO HAVE THESE TWO DOCTORS COME INTO COURT AND TESTIFY IN FRONT OF YOURSELF AND YOUR ATTORNEY.

DO YOU UNDERSTAND THAT RIGHT?

THE DEFENDANT: YES, SIR.

MR. FAGAN: AND DO YOU GIVE UP THAT RIGHT?

THE DEFENDANT: YES, SIR.

MR. FAGAN: DO YOU AGREE THE JUDGE CAN READ THE TWO REPORTS AND MAKE THIS DECISION BASED ON THE MATERIAL BASED IN THOSE REPORTS?

THE DEFENDANT: YES, I DO.

MR. FAGAN: PEOPLE JOIN IN ALL THE WAIVERS, YOUR HONOR.

THE COURT: VERY WELL.

THE COURT FINDS THAT MR. ROBBINS HAS BEEN DULY ADVISED OF THIS RIGHTS WITH RESPECT TO A JURY TRIAL FOR DETERMINATION OF THE ISSUE BEFORE THE COURT AND HAS KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY WAIVED AND GIVEN UP THOSE RIGHTS.

THEREFORE, THE COURT WILL ACCEPT THOSE WAIVERS AND ADMIT INTO THE RECORDS OF THE PROCEEDING THE

DEFENDANT'S STATED WISH THAT THE MATTER BE RESOLVED BY THE COURT.

MR. SEIFER, DO YOU HAVE ANYTHING FURTHER IN ADDITION TO THE TWO LETTERS THAT THE COURT HAS BEFORE IT AND HAS READ?

MR. SEIFER: NO, YOUR HONOR, I DON'T HAVE ANYTHING FURTHER ON THIS ISSUE. I AM PREPARED TO SUBMIT ON WHAT EISENBERG AND MEAD SAID, ALTHOUGH PARENTHETICALLY I WOULD LIKE TO SAY I SPOKE TO DR. EISENBERG AFTER I RECEIVED A COPY OF THIS REPORT SOMEWHAT BELATEDLY AND SUGGESTED TO DR. EISENBERG THAT ALTHOUGH I WAS ENLIGHTENED BY HIS COMMENTS AS TO THIS SUMMARY OF MR. ROBBINS' STATEMENTS ABOUT HIS LAWYER'S COMPETENCE OR INCOMPETENCE, THAT I WASN'T QUITE SURE THAT THE REPORT

REACHED THE ISSUES THAT JUDGE TORRIBIO WAS CONCERNED WITH BACK IN DECEMBER.

BUT IN ANY EVENT, I DON'T PERSONALLY HAVE MUST DOUBT ABOUT MR. ROBBINS' COMPETENCE.

THE COURT: MR. FAGAN, DO YOU HAVE ANYTHING TO SUBMIT IN ADDITION TO THE TWO LETTERS?

MR. FAGAN: NO, YOUR HONOR. I HAVE REVIEWED THE REPORTS AND IT APPEARS BOTH OF THEM REFLECT THE DEFENDANT IS PERFECTLY COMPETENT TO STAND TRIAL.

THE COURT: LET ME JUST INQUIRE OF MR. ROBBINS.

MR. SEIFER: CERTAINLY, YOUR HONOR.

THE COURT: IF I MAY.

MR. ROBBINS, YOU UNDERSTAND THAT YOU ARE CHARGED HERE WITH THE CRIME OF MURDER.

THE DEFENDANT: YES, SIR.

THE COURT: AND THAT THE PEOPLE ARE GOING TO BRING YOU TO TRIAL BEFORE A JURY FOR THEM TO DETERMINE THE TRUTH OR LACK OF TRUTH OF THOSE CHARGES.

YOU ARE GENERALLY AWARE OF THAT?

THE DEFENDANT: YES, SIR.

THE COURT: THAT YOU HAVE A RIGHT AT THAT TRIAL TO CONFRONT THE WITNESSES AGAINST YOU, YOU HAVE A RIGHT AT THAT TRIAL TO REMAIN SILENT.

AND DO YOU UNDERSTAND THOSE RIGHTS THAT YOU HAVE IN CONNECTION WITH THAT TRIAL?

THE DEFENDANT: YES, SIR, I DO.

THE COURT: YOU UNDERSTAND THAT THE CONSEQUENCES OF YOUR BEING FOUND GUILTY OF THE CRIME AS CHARGED ARE

SERIOUS TO THE EXTENT OF A POSSIBLE SENTENCE OF DEATH --

MR. FAGAN: NO, YOUR HONOR, IT IS NOT A DEATH CASE.

THE COURT: IT IS NOT THAT CRIME?

MR. FAGAN: THERE ARE NO SPECIAL CIRCUMSTANCES ALLEGED IN THIS CASE.

THE COURT: THERE ARE NO SPECIAL CIRCUMSTANCES?

MR. FAGAN: MAXIMUM PUNISHMENT WOULD BE OF 27 YEARS TO LIFE IMPRISONMENT.

THE COURT: TWENTY-SEVEN TO LIFE.

DO YOU UNDERSTAND THE CONSEQUENCES THEN, YOU COULD BE SENTENCED FROM 27 TO LIFE IN THE PENITENTIARY?

THE DEFENDANT: YES, SIR.

THE COURT: ALL RIGHT.

DO YOU FEEL YOURSELF GENERALLY ABLE TO ASSIST YOUR COUNSEL IN THE PREPARATION OF YOUR DEFENSE?

THE DEFENDANT: YES, SIR, I DO.

I'VE BEEN ATTEMPTING TO, BUT MR. SEIFER AND I HAVE HAD PROBLEMS SINCE HE WAS APPOINTED TO THE CASE AND I'D LIKE TO REQUEST AGAIN THAT I BE APPOINTED A NEW ATTORNEY IN THIS MATTER.

MR. FAGAN: WELL, IF I COULD, YOUR HONOR, THAT IS AN ISSUE THAT IS SEPARATE AND DISTINCT FROM THE ONE WE HAVE BEFORE US.

THE COURT: YES. MR. ROBBINS, THAT IS AN ISSUE -- AND YOU MIGHT JUST PUT THE NAME IN YOUR MIND AND YOU MAY WISH TO BRING IT UP FOR FURTHER CONSIDERATION. THAT IS WHAT IS KNOWN AS MARSDEN HEARING, M-A-R-S-D-E-N.

YOU WILL HAVE A RIGHT AT ANY TIME THROUGH THE COURSE OF THESE PROCEEDINGS, OR UP TO A CERTAIN POINT IN THESE PROCEEDINGS AT LEAST, TO ASK THE COURT TO SUBSTITUTE MR. SEIFER AND TO MAKE THE APPOINTMENT OF ANOTHER APPOINTED COUNSEL TO REPRESENT YOU. I AM NOT REPRESENTING TO YOU AT THIS TIME THAT I WILL EITHER GRANT OR DENY THAT MOTION, BUT YOU HAVE A RIGHT TO MAKE THAT MOTION.

FOR THESE PURPOSES, I SIMPLY WANT TO DETERMINE WHETHER YOU ARE COMPETENT TO GO FORWAF) TO STAND TRIAL FOR THE CRIME AS CHARGED.

THE DEFENDANT: YES, SIR.

THE COURT: I WOULD ALSO ENCOURAGE BOTH YOU AND MR. SEIFER TO MAKE ARRANGEMENTS TC GET TOGETHER AS SOON

AS POSSIBLE. I WOULD ENCOURAGE YOU TO BE SURE YOU'VE TOLD MR. SEIFER EVERYTHING YOU KNOW, GIVE HIM EVERY ASSISTANCE THAT YOU POSSIBLY CAN IN THE PREPARATION OF YOUR DEFENSE.

AND I WOULD ENCOURAGE MR. SEIFER TO TRY TO FIND THE TIME IN HIS BUSY CALENDAR, AND HE IS BUSY AND ALL ATTORNEYS ARE VERY BUSY, TO GET WITH YOU AND TO TALK WITH YOU ABOUT THIS CASE AT THIS EARLIEST OPPORTUNITY.

BUT FOR NOW, AS I SAY, I AM SIMPLY TRYING TO DETERMINE WHETHER YOU ARE COMPETENT TO STAND TRIAL. YOU UNDERSTAND THAT JUDGE TORRIBIO DID DECLARE A DOUBT ABOUT THAT AT SOME PRIOR TIME AND THAT IS WHY TWO PSYCHIATRISTS WERE APPOINTED TO INTERVIEW YOU.

AND YOU RECALL HAVING BEEN INTERVIEWED BY BOTH DR. MEAD AND DR. EISENBERG?

THE DEFENDANT: YES, SIR, I DO.

THE COURT: WHERE WERE THOSE INTERVIEWS CONDUCTED?

THE DEFENDANT: ONE WAS HERE IN L.A. AND IN DEPARTMENT 95 SUPERIOR COURT, AND THE OTHER WAS AT WAYSIDE MEDIUM NORTH FACILITY.

THE COURT: ALL RIGHT.

WHAT WAS YOUR FEELING, WHAT WAS YOUR REACTION TO THOSE INTERVIEWS?

THE DEFENDANT: IT WAS JUST BASICALLY LIKE TALKING TO ANY OTHER PSYCHIATRIST, I GUESS, EXCEPT I DIDN'T HAVE Â COUCH TO LAY ON. IT WAS MY CHILDHOOD HISTORY, EDUCATION HISTORY, WORK HISTORY AND THEN THEY ASKED, YOU KNOW, QUESTIONS

ABOUT THE CASE AND WHAT WAS GOING ON WITH IT AND --

THE COURT: ALL RIGHT.

DID YOU FIND THAT YOU UNDERSTOOD THEIR QUESTIONS?

THE DEFENDANT: YES, SIR.

THE COURT: AND YOU FOUND THAT YOU WERE ABLE TO ARTICULATE ANSWERS THAT WERE SATISFACTORY TO YOU TO THOSE QUESTIONS?

THE DEFENDANT: YES, SIR. I DIDN'T HAVE ANY TROUBLE COMMUNICATING OR CONVEYING MY THOUGHTS TO EITHER DOCTOR.

THE COURT: SO BETWEEN YOU AND EITHER DOCTOR, THERE WERE NO COMMUNICATION PROBLEMS THAT YOU WERE AWARE OF AT LEAST?

THE DEFENDANT: NO, SIR, THERE WEREN'T.

THE COURT; WELL, THE COURT IS PREPARED TO MAKE FINDINGS AND RULE HERE.

AS I HAVE PREVIOUSLY INDICATED, I HAVE READ BOTH LETTERS, ONE FROM DR. MEAD AND ONE FROM DR. EISENBERG, REGARDING THE QUESTION BEFORE THE COURT, WHICH IS WHETHER THIS DEFENDANT IS MENTALLY COMPETENT TO STAND TRIAL FOR A CRIMINAL OFFENSE.

BASED UPON MY READING OF THOSE LETTERS, BASED UPON STATEMENTS OF COUNSEL AND BASED UPON MY OWN INQUIRY HERE OF MR. ROBBINS AT THIS PROCEEDING, THE COURT WILL MAKE THE FOLLOWING FINDINGS:

THIS DEFENDANT, LEE ROBBINS, IS IN MY OPINION CAPABLE OF UNDERSTANDING THE NATURE AND THE PURPOSE OF THE

PROCEEDINGS AGAINST HIM AND COMPREHENDS THIS STATUS AND HIS CONDITION WITH REFERENCE TO THESE PROCEEDINGS.

HE UNDERSTANDS THE CONSEQUENCES OF AN ADVERSE FINDING BY THE JURY AGAINST HIM IN THESE PROCEEDINGS. HE APPEARS TO THIS COURT TO BE ABLE TO ASSIST HIS ATTORNEY IN THE CONDUCT OF HIS OWN DEFENSE.

THEREFORE, THE COURT WILL FIND THAT LEE ROBBINS IS MENTALLY COMPETENT TO STAND TRIAL FOR CRIMINAL OFFENSE BY THE PREPONDERANCE OF THE EVIDENCE. AND, THEREFORE, THE COURT WILL ORDER THAT CRIMINAL PROCEEDING BE RESUMED IN THIS CASE.

MR. SEIFER: YOUR HONOR, MR. ROBBINS POINTED OUT TO ME THAT HE WAS IN FACT

ARRAIGNED IN THIS DEPARTMENT ON DECEMBER 19TH AND THAT JUDGE TORRIBIO APPARENTLY DECLARED A DOUBT THE NEXT DAY ON DECEMBER 20TH.

THE COURT: I SEE.

MR. SEIFER: I AM NOT QUITE SURE WHAT THE -- IS THAT CORRECT?

THE CLERK: YES.

MR. SEIFER: SO I WOULD SUGGEST THT THIS IS PROBABLY DAY 2 OF 60.

MR. FAGAN: I WOULD JUST REQUEST WE SET THE MATTER ON OR ABOUT THE 49TH DAY FROM TODAY.

THE COURT: DO YOU WANT A PRETRIAL?

MR. FAGAN: THERE IS NO POINT IN PRETRIAL IN THIS CASE.

MR. SEIFER: I DON'T THINK A PRETRIAL WILL MAKE ANY DIFFERENCE.

I WILL BE FILING A 995 IN THIS CASE, YOUR HONOR.

THE COURT: ALL RIGHT.

THAT CAN BE FILED AT ANY TIME.

MR. SEIFER: YES, SIR.

THE COURT: 49 DAYS FROM TODAY IS APRIL 19TH. 47 DAYS FROM --

MR. FAGAN: WE CAN SET IT APRIL 19TH, YOUR HONOR, BUT THAT WILL BE THE 50TH DAY.

THE COURT: IF THIS IS 2 OF 60, APRIL 19TH WILL BE 51. IS THIS -- 50.

MR. FAGAN: 50.

THE COURT: APRIL 20 WILL BE SET AS THE DATE OF TRIAL AND THAT WILL BE DEEMED TO BE 50 OF 60.

ALL RIGHT.

MR. FAGAN: THANK YOU, YOUR HONOR.

MR. SEIFER: YOUR HONOR, THERE IS ONE OTHER MATTER IF I MAY.

AS THE COURT INDICATED, MR. ROBBINS CAN MAKE A MARSDEN MOTION. THERE WAS A MARSDEN MOTION MADE AT BELLFLOWER AT THE PRELIMINARY HEARING ON OCTOBER 19TH AND I BELIEVE THERE WAS A MARSDEN MOTION MADE TO JUDGE TORRIBIO ON THE 19TH OF DECEMBER OR THE 20TH OF DECEMBER. THERE HAVE BEEN AT LEAST TWO PRIOR MARSDEN MOTIONS.

HOWEVER, MR. ROBBINS HAS ASKED ME AGAIN TODAY IF THIS COURT WOULD HEAR ANOTHER MARSDEN MOTION. I TOLD HIM I WOULD ASK THE COURT TO DO THAT.

THE COURT: WELL, THE DEFENDANT HAS A RIGHT TO BE HEARD ON THAT MOTION. I WOULD NOT BE ABLE TO HEAR THAT MOTION

TODAY, BUT I WOULD BE WILLING TO HEAR THAT MOTION A WEEK FROM TODAY.

THE DEFENDANT: THANK YOU, YOUR HONOR.

MR. SEIFER: THAT WILL BE FINE, YOUR HONOR.

THE COURT: THAT WILL BE THE 8TH.

MR. SEIFER: YOUR HONOR, I HAVE A DENTAL APPOINTMENT EARLY ON THE MORNING OF THE 8TH. I WONDER IF WE CAN PUT THAT ON THE 1:30 CALENDER?

THE COURT: I WOULD RATHER MAKE IT THE 7TH.

MR. SEIFER: OKAY.

MR. FAGAN: YOUR HONOR, I WON'T EVEN BE PRESENT.

THE COURT: YOU WON'T EVEN BE HERE.

MR. FAGAN: SO IT MAKES NO DIFFERENCE TO ME.

THE COURT: UNLESS WE NEED YOU FOR SOME REASON.

MR. FAGAN: I WILL NOT BE. I WILL BE OUT OF TOWN.

MR. SEIFER: ORDINARILY THE PEOPLE ARE NOT PRESENT.

MR. FAGAN: I AM EXCLUDED FROM THE MOTION ANYWAY.

THE COURT: UNLESS THERE IS SOME INFORMATION WE NEED FROM YOU.

MR. FAGAN: IF THAT IS NEEDED, SOMEBODY ELSE CAN FILL IN.

MR. SAMOIAN: MISS GRAVES WILL BE HERE NEXT WEEK. SHE CAN DO THAT.

THE COURT: LET'S HEAR THAT MOTION ON THE MORNING OF MARCH 7TH.

MR. SEIFER: BE FINE, YOUR HONOR.

THE DEFENDANT: THANK YOU SIR.

THE COURT: ALL RIGHT. VERY WELL.

MR. FAGAN: YOUR HONOR, I BELIEVE MY MATTERS ARE CONCLUDED. MAY I BE EXCUSED?

THE COURT: YOUR MATTERS ARE CONCLUDED. YOU MAY BE EXCUSED. THANK YOU, MR. FAGAN.

YOU ARE REMANDED TO CUSTODY THEN, MR. ROBBINS.

(AT 2:05 P.M., THE PROCEEDINGS WERE CONTINUED TO WEDNESDAY, MARCH 7, 1990, AT 9:00 A.M.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT SOUTHEAST J	HON. C. ROBERT SIMPSON, JR., JUDGE
THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. LEE ROBBINS, Defendant.	) NO. A481636

REPORTER'S TRANSCRIPT ON APPEAL

MARSDEN HEARING

WEDNESDAY, MARCH 7, 1990

APPEARANCES:

FOR THE DEFENDANT:

WILBUR F. LITTLEFIELD,
PUBLIC DEFENDER
BY: RALPH SEIFER, DEPUTY
19-513 CRIMINAL COURTS BUILDING
210 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012

KATHLEEN H. ADAMS,
CSR #2853
OFFICIAL REPORTER

NORWALK, CALIFORNIA;

WEDNESDAY, MARCH 7, 1990*

1:55 P.M.

DEPARTMENT SE J HON. C. ROBERT SIMPSON, JR., JUDGE

APPEARANCES:

THE DEFENDANT WITH HIS COUNSEL, RALPH SEIFER, DEPUTY PUBLIC DEFENDER OF LOS ANGELES COUNTY; NO DEPUTY DISTRICT ATTORNEY OF LOS ANGELES COUNTY BEING PRESENT.

(KATHLEEN H. ADAMS, OFFICIAL REPORTER.)

THE COURT: LET THE RECORD SHOW THAT LEE ROBBINS IS PRESENT IN COURT WITH HIS ATTORNEY, DEPUTY PUBLIC DEFENDER RALPH SEIFER.

THE MATTER IS BEFORE THE COURT THIS AFTERNOON I AM ADVISED FOR THE PURPOSE OF YOUR REQUESTING THAT I APPOINT A NEW ATTORNEY TO REPRESENT YOU, MR. ROBBINS.

IS THAT WHAT YOU WANT ME TO DO?

THE DEFENDANT: YES, SIR.

THE COURT: WHY DO YOU WANT ME TO DO THAT?

THE DEFENDANT: WELL, YOUR HONOR, THIS IS THE FOURTH MARSDEN HEARING THAT I HAVE HAD. AT THE FIRST ONE IN MUNICIPAL COURT, COMMISSIONER TIPTON SAID HE DIDN'T HAVE ANYONE BETTER TO REPLACE MR. SEIFER WITH. THE SECOND HEARING, COMMISSIONER TIPTON SAID I HAD TO SHOW THE PUBLIC DEFENDER TO BE INCOMPETENT.

THE THIRD HEARING, THIS TIME IN SUPERIOR COURT HERE IN NORWALK, JUDGE

TORRIBIO SUSPENDED PROCEEDINGS PENDING THE OUTCOME OF THE DOCTOR'S EXAM.

BOTH DOCTORS HAVE REVIEWED MY CASE AND EXAMINED ME THOROUGHLY AND CONCLUDED I AM SANE AND COMPETENT. I ALSO BELIEVE THE DOCTORS MADE A RECOMMENDATION TO THE COURT REGARDING MR. SEIFER.

YOUR HONOR, I HAVE ANOTHER ATTORNEY WHOM I CAN TRUST AND WORK WITH AND WHO IS WILLING TO HANDLE MY CASE IF THE COURT WOULD PLEASE APPOINT HIM.

MR. SEIFER IS THE THIRD PUBLIC DEFENDER I HAVE HAD. THE FIRST TWO WERE REPLACED AFTER TELLING ME THE CASE WOULD BE DISMISSED. AND THEN I GOT MR. SEIFER, WHO SAYS I SHOULD TAKE THE DEAL

THE D.A. WANTS ME TO SET BECAUSE I AM GUILTY UNTIL I CAN PROVE I AM INNOCENT.

THE COURT: WHAT IS THE BASIC CHARGE, MR. ROBBINS? WHAT ARE YOU CHARGED WITH?

THE DEFENDANT: FIRST DEGREE MURDER, SIR.

THE COURT: OH, YES. ALL RIGHT.

AND I REMEMBER THAT YOU WERE HERE A WEEK OR SO AGO AND I FOUND YOU COMPETENT TO STAND TRIAL.

THE DEFENDANT: YES, SIR.

THE COURT: ALL RIGHT.

GO AHEAD.

THE DEFENDANT: I BELIEVE THERE IS A CONFLICT OF INTEREST DUE TO CLOSE PERSONAL RELATIONSHIP BETWEEN MR. SEIFER AND MR. FAGAN. IT WAS NECESSARY FOR

JUDGE TORRIBIO TO TELL MR. SEIFER TO FILE A DISCOVERY MOTION.

ALSO, MR. SEIFER WAS KIND ENOUGH TO BRING IN EVIDENCE, A TAPED THREAT AGAINST ME, THAT I HAD SPECIFICALLY TOLD HIM SUPPRESS BECAUSE IT WAS OBTAINED IN AN ILLEGAL SEARCH.

I HAVE REPEATEDLY REQUESTED COPIES OF POLICE REPORTS, TRANSCRIPTS, AND DEPOSITIONS, AND I HAVE BEEN REFUSED BY MR. SEIFER. MR. SEIFER HAS TOLD ME THAT I HAVE NO DEFENSE; AND UNTIL HE FEELS OTHERWISE, THERE IS NOTHING HE CAN DO.

HE HAS ALSO SAID THAT HE WAS GOING TO FILE A MOTION TO DISMISS, BUT HAS NOT DONE SO, LATER SAYING THAT THE D.A. WILL ONLY REFILE IF THE CASE IS DISMISSED.

I TOLD MR. SEIFER THAT I WANTED A LINE-UP BECAUSE MR. FAGAN HAD A WITNESS

WHO SAW SOMEONE NEAR THE SCENE OF THE MURDER ABOUT THE TIME OF THE MURDER. MR. SEIFER REFUSED. THE WITNESS, WHEN BROUGHT TO COURT, DID NOT IDENTIFY ME AS THE PERSON SHE SAW.

THE CRIME SCENE EVIDENCE INDICATES THAT THE MURDERER SHOULD HAVE BEEN WOUNDED. YET WHEN I ASKED MR. SEIFER TO HAVE THE DOCTORS VERIFY THAT I HAVE NOT BEEN WOUNDED, MR. SEIFER REFUSED.

I BELIEVE THE D.A. TAMPERED WITH THE EVIDENCE AND IS WITHHOLDING EVIDENCE IN THIS CASE. AT THE PRELIMINARY HEARING, MR. FAGAN DISPLAYED THE MURDER WEAPON NOT AS IT WAS OBTAINED WITH AN AIM-POINT-SIGHT SCOPE ON IT, BUT WITHOUT THE SCOPE AND ONE HANDGRIP WAS MISSING.

I BELIEVE THAT WAS DONE IN AN ATTEMPT TO MAKE THE MURDER WEAPON

LOOK LIKE THE WEAPON I HAD DESCRIBED TO MR. SEIFER AS HAVING HAD THAT NIGHT.

ON THE NIGHT THE MURDER OCCURRED, I WAS SHOWING TWO GUNS TO A NAVY WEAPONS EXPERT WHO MR. FAGAN BROUGHT TO COURT IN HOPES OF HAVING HIM IDENTIFY THE MURDER WEAPON AS THE ONE I HAD SHOWN TO HIM.

WHEN THE WITNESS MENTIONED THAT ONE HANDGRIP WAS MISSING, DETECTIVE JONES OPENED THE EVIDENCE BAG TO GET THE OTHER BROWN HANDGRIP. AT THIS POINT I SAW THE MISSING AIM-POINT-SIGHT SCOPE IN THE EVIDENCE BAG.

THE WITNESS THEN TOLD THE COURT THAT THE MURDER WEAPON WAS DIFFERENT THAN THE WEAPON THAT I HAD IN THAT THE MURDER WEAPON IS ALL BLUE WITH BROWN

GRIPS WHILE THE WEAPON I HAD WAS SILVER FRAMED BLACK GRIPS.

HE ALSO STATED I DID NOT LEAVE UNTIL SOMETIME AFTER 6:30, CLOSER TO 8:00 P.M. THAT NIGHT. THE MURDER OCCURRED AT 6:00 TO 6:15 P.M. ACCORDING TO THE CORONER OR 6:25 P.M. ACCORDING TO THE WITNESS WHO HEARD THE SHOTS.

BECAUSE OF THE INVOLVEMENT OF THE EX-MAYOR OF CERRITOS AND HIS SON IN THIS CASE, YOUR HONOR, I DO NOT WANT ANYONE CONNECTED WITH THE PUBLIC DEFENDER'S OFFICE TO REPRESENT ME.

THE VICTIM'S SISTER WORKS FOR THE SHERIFF'S DEPARTMENT AND THEY HAVE SEARCHED MY LIVING QUARTERS, MY STORAGE AREA, AND IMPOUNDED MY VEHICLE AND PERSONAL PROPERTY.

THE COURT: WHO WORKS FOR THE SHERIFF'S DEPARTMENT? THE VICTIM'S SISTER?

THE DEFENDANT: YES, SIR. AND THEY CONDUCTED THESE SEARCHES AND SEIZURES WITHOUT ANY WARRANTS. I WAS ALSO BROUGHT TO CALIFORNIA FROM ARKANSAS WITHOUT A GOVERNOR'S WARRANT.

BECAUSE OF THESE FACTS, YOUR HONOR, I AGAIN REQUEST THAT MR. SEIFER BE REMOVED FROM THE CASE AND THAT THE ATTORNEY I AM REQUESTING PLEASE BE APPOINTED.

THE COURT: WHO ARE YOU REQUESTING?

THE DEFENDANT: MR. RAND RUBIN OF LOS ANGELES, SIR. HE HAS BEEN BRIEFED ON THE CASE AND HE HAS OFFERED TO REPRESENT ME IN THE MATTER IF THE COURT WOULD APPOINT HIM.

THE COURT: MR. SEIFER, MR. ROBBINS HAS MADE SOME -- I MADE SOME QUICK NOTES HERE. MR. ROBBINS HAS MADE SEVERAL POINTS AND I WOULD LIKE TO HAVE JUST A BRIEF RESPONSE.

MR. SEIFER: YES, SIR.

THE COURT: WITH RESPECT TO YOUR RELATIONSHIP TO MR. FAGAN.

MR. SEIFER: YOUR HONOR, MR. ROBBINS CHARACTERIZED MY RELATIONSHIP WITH MR. FAGAN I THINK AS A CLOSE PERSONAL RELATIONSHIP. I KNOW MR. FAGAN ONLY PROFESSIONALLY.

I HAVE NEVER PLAYED GOLF WITH MR. FAGAN. HE WAS MARRIED OVER THE WEEKEND IF I UNDERSTAND CORRECTLY. I WAS NOT INVITED TO MR. FAGAN'S WEDDING.

I HAVE THE HIGHEST REGARD FOR JIM FAGAN PROFESSIONALLY. BUT MY DEALINGS

WITH FAGAN -- IF JIM FAGAN TELLS ME SOMETHING, I HAVE NOT THE SLIGHTEST DOUBT ABOUT HIS VERACITY OR THE ACCURACY OF WHAT HE SAYS.

I HAVE TRIED TO RELAY THAT TO MR. ROBBINS BECAUSE MR. FAGAN HAS MADE WHAT I CONSIDERED TO BE AN OFFER THAT IS CERTAINLY WORTH MR. ROBBINS SPENDING SOME TIME CONSIDERING AND I HAVE TRIED TO EMPHASIZE THAT IN MY DISCUSSIONS WITH HIM.

BUT IN TERMS OF A CLOSE PERSONAL RELATIONSHIP WITH MR. FAGAN, I THINK IT EXTENDS PROFESSIONALLY ONLY, SIR.

THE COURT: ALL RIGHT.

MR. ROBBINS MADE REFERENCE TO SEVERAL MOTIONS. ONE HE MENTIONED MOTION TO DISMISS. I ASSUME UNDER 1385.

HAS THAT BEEN SOMETHING THAT YOU DISCUSSED WITH MR. ROBBINS?

MR. SEIFER: NOT A 1385 MOTION, YOUR HONOR. I HAD MENTIONED TO MR. ROBBINS THAT I INTENDED TO FILE A 995 MOTION IN THIS MATTER. I ADVISED THE COURT AND MR. FAGAN OF THAT ON MARCH 1ST WHEN WE WERE HERE ON THE 1368 MATTER.

THERE WILL BE A 995 PREPARED AND FILED IN THIS CASE. I DON'T KNOW THAT THERE IS ANY GREAT URGENCY TO IT. IT WILL BE SOMETIME BETWEEN NOW AND THE 20TH OF APRIL WHEN THE CASE COMES UP ON THE 50TH DAY. I AM PRESENTLY WORKING ON IT.

IF MY SCHEDULE IS NOT COMPATIBLE WITH MR. ROBBINS, THEN I APOLOGIZE FOR THAT.

THE COURT: ALL RIGHT.

MR. ROBBINS ALSO MENTIONED POSSIBLE 1385 -- 1538.5 MOTION.

MR. SEIFER: YES, SIR. MR. ROBBINS ASKED TO SUPPRESS A TAPE THAT WAS A MESSAGE LEFT ON HIS TELEPHONE ANSWERING MACHINE I BELIEVE BY THE VICTIM. IT WAS A THREAT BY THE VICTIM THREATENING TO KILL MR. ROBBINS. I AM PARAPHRASING.

I HAVEN'T REVIEWED THE TRANSCRIPT OF THAT TAPE RECENTLY. BUT BASICALLY THAT'S -- IT WAS A MESSAGE LEFT BY THE VICTIM ON MR. ROBBINS'S ANSWERING MACHINE. IT WAS FOUND BY THE POLICE WHEN THEY SEARCHED HIS QUARTERS IN CONNECTION WITH HIS ARREST OR THE FILING OF THIS CASE EARLY IN 1989.

MR. ROBBINS FEELS THAT I SHOULD DO SOMETHING TO SUPPRESS THAT TAPE AS A RESULT OF AN ILLEGAL -- WHAT HE

CHARACTERIZES AS AN ILLEGAL SEARCH. IN MY VIEW WHETHER THE SEARCH WAS OR NOT ILLEGAL ISN'T THE QUESTION. IT WAS A THREAT FROM THE VICTIM AND I THINK IT MAY BE OF SOME RELEVANCE IN THIS CASE.

I HAVE NO INTENTION, AT LEAST AT THIS MOMENT, OF MOVING TO SUPPRESS A THREAT FROM THE VICTIM.

THE COURT: IF ANYTHING, THAT MIGHT VERY WELL BE FAVORABLE TO THE DEFENDANT.

MR. SEIFER: WELL, IT'S POSSIBLE, YOUR HONOR. I AM NOT QUITE SURE WHERE THIS CASE IS GOING. BUT IN MY JUDGMENT AT THIS TIME, I DON'T SEE ANY MERIT IN MOVING TO SUPPRESS IT.

THE COURT: ALL RIGHT.

WELL, WERE MR. ROBBINS'S QUARTERS SEARCHED WITH A WARRANT?

MR. SEIFER: I BELIEVE THE -- I AM NOT SURE, YOUR HONOR. I DON'T BELIEVE A WARRANT WAS OBTAINED, BUT I AM NOT CERTAIN OF THAT. I WOULD HAVE TO GO BACK THROUGH THE FILE.

THE COURT: IS THERE OTHER EVIDENCE THAT MIGHT BE THE SUBJECT OF SUPPRESSION?

MR. SEIFER: NO, SIR. ONLY THE TAPE.

THE COURT: ONLY THE TAPE. ALL RIGHT.

AND TACTICALLY THERE WOULD APPEAR TO BE A GENUINE QUESTION THERE AS TO WHETHER THAT TAPE SHOULD OR SHOULDN'T BE SUPPRESSED. ALL RIGHT.

MR. ROBBINS MENTIONED THAT HE HAS BEEN UNSUCCESSFUL IN GETTING FROM YOU COPIES OF CERTAIN OF BASIC DOCUMENTS, POLICE REPORT --

MR. SEIFER: THAT IS LARGELY TRUE, YES, SIR.

THE COURT: THE INFORMATION, ET CETERA.

MR. SEIFER: I GAVE MR. ROBBINS A COPY OF A SUPPLEMENTAL REPORT THAT WAS PROVIDED TO ME BY THE SHERIFF'S INVESTIGATORS. I HAVE NOT GIVEN HIM COPIES OF OTHER THINGS THAT I HAVE IN THE FILE. I HAVE NOT REFUSED TO LET HIM READ THOSE.

I HAVE BEEN TO THE COUNTY JAIL AT LEAST ONCE TO SEE MR. ROBBINS AND I WAS OUT AT WAYSIDE EITHER ONCE OR TWICE TO SEE HIM. WE HAVE HAD SOME EXTENSIVE DISCUSSIONS. HE HAS SEEN A LOT OF THE MATERIAL THAT I HAVE.

MY OWN PERSONAL POLICY, YOUR HONOR, WITH REGARD TO GIVING COPIES OF THIS MATERIAL TO PEOPLE IN CUSTODY IS THAT ALMOST INVARIABLY THE NEXT THING

THAT HAPPENS IS I GET A CALL FROM THE DISTRICT ATTORNEY ADVISING THAT THERE IS A SNITCH DOWN AT THE COUNTY JAIL OR OUT AT WAYSIDE WHO HAS BEEN TALKED TO BY MY CLIENT AND MY CLIENT HAS VIRTUALLY CONFIRMED EVERYTHING THAT HAS BEEN ALLEGED IN THE CASE.

AND BASICALLY WHAT'S HAPPENED IS SOMEBODY HAS GOTTEN A HOLD OF THESE DOCUMENTS AND READ THEM AND THEN GONE TO THE SHERIFF AND TRIED TO CUT HIMSELF A BETTER DEAL.

SO MY OWN PERSONAL POLICY IS THAT IT IS EASIER TO CONTROL THE CASE WITHOUT HAVING THAT KIND OF INTERFERENCE. AND THAT IS MY REASON FOR NOT GIVING THE STUFF TO MR. ROBBINS.

I DON'T HAVE ANY HEARTBURN ABOUT HIM READING IT. HE IS ENTITLED TO READ IT. I HAVE NO OBJECTION TO THAT.

THE COURT: VERY WELL.

MR. ROBBINS MADE REFERENCE TO A PROBLEM WITH WITNESSES AT THE LINE-UP.

CAN YOU ELUCIDATE A LITTLE BIT ON THAT?

MR. SEIFER: I WILL, YOUR HONOR, IF I DON'T -- IF THIS DOESN'T GET INTO SOMETHING BETWEEN BY CLIENT AND MYSELF.

THE COURT: STOP SHORT OF THE PRIVILEGE.

MR. SEIFER: I WILL TRY TO DO THAT, YOUR HONOR.

THERE WAS A WITNESS OR COUPLE OF WITNESSES WHO SAW A MAN ON THE CORNER OF THE STREET OF WITNESSES WHO SAW A MAN ON THE CORNER OF THE STREET WHERE

THE HOUSE WAS WHERE THE VICTIM DIED ON NEW YEAR'S EVE OF -- ON DECEMBER 31ST, 1988. THOSE PEOPLE SPOKE TO A MAN ON THAT CORNER SOMETIME AROUND 6:00 OR 6:15 OR 6:30 THAT EVENING.

THEY SUBSEQUENTLY TOLD THE SHERIFF THAT THEY COULD NOT IDENTIFY HIM, BUT THERE WAS -- THEY GAVE THE SHERIFF WHAT THE BASIS WAS OF THE CONVERSATION.

I BELIEVE THERE WAS AN INTERVIEW WITH MR. ROBBINS BEFORE HE BECAME A CLIENT OF THE PUBLIC DEFENDER IN WHICH INTERVIEW HE TOLD THE SHERIFF THAT HE HAD STOPPED HIS I BELIEVE IT WAS A PICKUP TRUCK ON THAT CORNER AT ABOUT THAT TIME TO LET HIS LITTLE DOG OUT TO URINATE.

AND THE DOG HAD BEEN FRIGHTENED BY SOME NOISES, WHICH WERE APPARENTLY

FIRECRACKERS OR SOUNDED LIKE FIRECRACKERS.

THE PEOPLE AT THE HOUSE ON THE CORNER CAME OUT, SAW THE MAN ON THEIR LAWN, AND ASKED HIM WHAT HE WAS DOING. AND I THINK HE SAID HE WAS TRYING TO LOCATE HIS DOG.

THE WIFE OF THE COUPLE WHO LIVE AT THAT ADDRESS TESTIFIED FOR THE PROSECUTION AT THE PRELIM ABOUT THE CONVERSATION AND THE FACT THAT SHE SPOKE TO A MAN. SHE COULD NOT IDENTIFY THAT MAN AS LEE ROBBINS, DIDN'T REMEMBER PRECISELY WHAT HE LOOKED LIKE. SHE TESTIFIED AT THE PRELIM BASICALLY AS SHE TOLD TH INVESTIGATING OFFICERS AT THE TIME.

MR. ROBBINS FEELS THAT THERE SHOULD BE A LINE-UP AND I GUESS THE

PURPOSE OF THE LINE-UP WOULD BE TO CONFIRM THAT SHE COULDN'T IDENTIFY HIM. SHE HAS ALREADY TESTIFIED TO THAT FACT AT THE PRELIM. I AM NOT QUITE SURE WHO ELSE MR. ROBBINS FEELS SHOULD COME TO A LINE-UP AND FOR WHAT PURPOSE.

I AM UNCLEAR AS TO -- WE HAVE DISCUSSED THIS IN THE PAST. SHE DIDN'T IDENTIFY HIM THEN, SHE DIDN'T IDENTIFY HIM AT THE PRELIM. I DON'T SEE ANY REASON WHY I NEED A LINE-UP.

THE COURT: EVIDENTIARYWISE, NOTHING WOULD APPEAR TO BE GAINED BY HAVING HER PRESENT AT A LINE-UP. PRESUMABLY HER INABILITY TO IDENTIFY WOULD BE THE SAME. THE ONLY THING SHE COULD DO WOULD BE TO CHANGE HER TESTIMONY TO THE DETRIMENT OF THE DEFENDANT.

MR. SEIFER: WELL, IF THAT IS THE WITNESS THAT MR. ROBBINS WANTS BROUGHT TO A LINE-UP, YOUR HONOR, I AM NOT REALLY SURE WHAT HE IS ASKING FOR IN THAT REGARD. MAYBE HE COULD -- IF I AM NOT ADDRESSING HIS SPECIFIC COMPLAINT PRECISELY, MAYBE HE COULD TELL ME.

THE COURT: ALL RIGHT.

I WILL GET BACK TO MR. ROBBINS IN A MINUTE.

FINALLY I HAVE A NOTE HERE ABOUT A POINT THAT MR. ROBBINS MADE CONCERNING A CONFLICT OF INTEREST BETWEEN THE PUBLIC DEFENDER'S OFFICE, THE SHERIFF, I GUESS ANYONE IN LAW ENFORCEMENT OR FUNCTIONING IN THE CAPACITY AS THE PUBLIC DEFENDER BECAUSE THE VICTIM'S SISTER WORKS FOR ONE OF THE SHERIFF DEPARTMENTS.

DO YOU SEE ANY PROBLEM THERE?

MR. SEIFER: YOUR HONOR, I DON'T KNOW WHO THE VICTIM'S SISTER IS BY NAME. IT MAY BE IN MY FILE, BUT I HAVE HAD NO CONTACT WITH HER. I HAVE REGULAR CONTACT WITH THE SHERIFF ON THIS CASE AND OTHER CASES.

MR. ROBBINS ALSO GAVE ME THE NAME OF A -- I THINK A FORMER BROTHER-IN-LAW OF HIS WHO IS AN OFFICER OF THE COMPTON POLICE DEPARTMENT. I CALLED THAT GENTLEMAN. I HAVE SPOKEN WITH HIM.

I DON'T THINK THAT REPRESENTS ANY MORE OR LESS OF A CONFLICT THAN THE VICTIM'S SISTER BEING ON THE SHERIFF'S DEPARTMENT. IF IT REPRESENTS A CONFLICT, I DON'T REALLY SEE IT.

THE COURT: DO YOU HAVE ANYTHING ELSE, MR. ROBBINS?

THE DEFENDANT: NO, SIR. EXCEPT THAT IF THE COURT IS UNABLE TO APPOINT ANOTHER ATTORNEY FOR ME, YOUR HONOR, I WOULD LIKE TO REQUEST TO REPRESENT MYSELF IN THE MATTER RATHER THAN GO TO TRIAL WITH MR. SEIFER.

THE COURT: WELL, ALL RIGHT.

YOU CERTAINLY HAVE A RIGHT TO DO THAT.

LET ME -- I DON'T THINK THERE IS ANYTHING HERE THAT THE DISTRICT ATTORNEY CAN SHED ANY LIGHT ON. I THINK WE CAN RESOLVE THE MATTER HERE AMONG THE THREE OF US.

HOW MANY TIME HAVE YOU BEEN OUT TO VISIT MR. ROBBINS, MR. SEIFER?

MR. SEIFER: YOUR HONOR, I HAVE A -- I KEEP A DAILY JOURNAL, A DAYTIME WHERE I AM SURE THE COURT IS FAMILIAR WITH THAT.

I HAVE -- MY DAYTIME IS IN THE OFFICE SINCE I WAS ASSIGNED TO THIS CASE. I WOULD HAVE TO GO BACK AND LOOK TO TELL YOU PRECISELY. BUT I --

THE COURT: TO THE BEST OF YOUR RECOLLECTION.

MR. SEIFER: THERE WAS ONE VISIT AT THE COUNTY JAIL WHEN MR. ROBBINS FIRST -- WHEN I FIRST PICKED UP MR. ROBBINS AS A CLIENT.

THERE WAS I BELIEVE TWO VISITS, MAYBE MR. ROBBINS CAN CORRECT ME IF I AM WRONG, TWO VISITS AT WAYSIDE. AND THERE WAS A VISIT WHEN I ASKED THE SHERIFF TO DELIVER MR. ROBBINS TO BELLFLOWER WHERE I SAT DOWN WITH MR. ROBBINS AND REED WEBB OF OUR OFFICE AND WE BOTH SPOKE TO HIM AT SOME LENGTH.

I WOULD SUGGEST THERE HAVE BEEN AT LEAST FOUR DISCUSSIONS AT SOME LENGTH AND I WOULD ESTIMATE THAT EACH ONE OF THOSE WAS PROBABLY AN HOUR OR BETTER ON EACH OCCASION. AND THERE MAY HAVE BEEN OTHERS THAT I CAN'T SPECIFICALLY RECALL, YOUR HONOR.

THE COURT: MR. ROBBINS, DO YOU FIND MR. SEIFER DIFFICULT TO TALK TO?

THE DEFENDANT: WE DON'T AGREE ON THE CASE. WE HAVEN'T AGREED ON THE CASE SINCE I FIRST PICKED MR. SEIFER UP.

THE COURT: BUT IS HE A MAN THAT YOU CAN TALK TO, YOU CAN CONVERSE WITH, YOU CAN EXPRESS YOURSELF TO HIM, AND HE CAN EXPRESS HIMSELF TO YOU AND, IN OTHER WORDS, ARE THE TWO OF YOU COMMUNICATING OPENLY?

THE DEFENDANT: I DON'T THINK WE ARE COMMUNICATING, SIR. I THINK THERE IS A DEFINITE LACK OF UNDERSTANDING INVOLVED. I DON'T KNOW IF IT IS PERSONALITY DIFFERENCES OR THE FACT THAT HE SEES THE CASE IN ONE LIGHT AND I SEE IT IN ANOTHER.

THE COURT: YOU ARE TALKING TO EACH OTHER, BUT YOU ARE NOT SURE YOU ARE GETTING EACH OTHER'S MEANING; IS THAT WHAT YOU ARE SAYING?

THE DEFENDANT: YES, SIR. AND DUE TO THE NATURE OF THE CASE, I FEEL I SHOULD HAVE ANOTHER ATTORNEY. I DON'T HAVE ANYTHING PERSONAL AGAINST MR. SEIFER, BUT I DON'T FEEL WE ARE DOING WHAT I THINK AS A CLIENT AND AN ATTORNEY.

THE COURT: WELL, LET ME JUST BRIEFLY STATE FOR YOU WHAT THE RULES ARE THAT GOVERN MY DECISION HERE.

THE DEFENDANT: YES, SIR.

THE COURT: I HAVE A TWO-PRONG APPROACH TO THE ANALYSIS OF THIS KIND OF A PROBLEM.

THE FIRST PRONG IS TO DETERMINE WHETHER ON THE BASIS OF THE THINGS THAT YOU HAVE SAID TO ME AND ON THE BASIS OF MR. SEIFER'S REPLIES, EXPLANATIONS, COMMENTS, THAT I CONCLUDE THAT MR. SEIFER CAN PROVIDE YOU WITH CONSTITUTIONALLY ADEQUATE REPRESENTATION OR THAT HE CANNOT PROVIDE YOU WITH CONSTITUTIONALLY ADEQUATE OR COMPETENT REPRESENTATION.

IN OTHER WORDS, DOES MR. SEIFER UNDERSTAND THE NATURE OF THE CASE, IS HE

A PRACTICED, KNOWLEDGEABLE ATTORNEY, IS HE COMPETENT TO REPRESENT YOU IN ALL OF THE WAYS THAT THE CONSTITUTION REQUIRES THAT YOU BE REPRESENTED IN COURT -- CONFRONTING AND CROSS-EXAMINING WITNESSES, TESTIFYING OR NOT TESTIFYING GOING IN ACCORDANCE WITH YOUR RIGHT TO REMAIN SILENT, PRESENTING WITNESSES ON YOUR BEHALF IF YOU DECIDE TO DO THAT -- ALL OF THE THINGS THAT A PRACTICED, COMPETENT ATTORNEY CAN DO FOR YOU AT TRIAL.

THE OTHER PRONG OF THE ANALYSIS IS THE COMMUNICATION BETWEEN THE TWO OF YOU. IF THE COMMUNICATION BETWEEN THE TWO OF YOU WAS AT SUCH A STAGE THAT YOU SIMPLY WEREN'T TALKING AT ALL SO THAT MR. SEIFER COULDN'T PROVIDE YOU WITH CONSTITUTIONALLY COMPETENT

REPRESENTATION SIMPLY BECAUSE THE TWO OF YOU WEREN'T COMMUNICATING, JUST WEREN'T EVEN TALKING, THEN WE MIGHT HAVE A PROBLEM.

BUT THE CASES THAT ADDRESS THIS KIND OF A PROBLEM TELL ME THAT THE RESPONSIBILITY FOR COMMUNICATING IS A TWO-WAY STREET. THE ATTORNEY MUST TRY TO COMMUNICATE WITH THE CLIENT, THE CLIENT MUST TRY TO COMMUNICATE WITH THE ATTORNEY. BOTH PARTIES MUST MAKE AN EFFORT TO TRY TO COMMUNICATE IN A MEANINGFUL WAY WITH EACH OTHER.

AND WHILE YOU MAY NOT BELIEVE THAT MR. SEIFER AGREES WITH YOUR THEORY OF THE CASE, WHILE YOU MAY BELIEVE THAT MR. SEIFER TACTICALLY WANTS TO DO THINGS OR NOT TO DO, DOESN'T MEAN THAT THE TWO OF YOU AT LEAST AREN'T TALKING, THAT YOU

ARE ABLE TO SIT DOWN AND DISCUSS THE THING EVEN THOUGH YOU ARE NOT COMING TO AN AGREEMENT.

I DON'T FIND ANY BASIS FOR GRANTING YOUR MARSDEN MOTION, MR. ROBBINS. MR. SEIFER IS A KNOWLEDGEABLE, PRACTICED, EXPERIENCED, SKILLED CRIMINAL DEFENSE LAWYER.

HE IS NOT ASSIGNED TO MY COURT, BUT I KNOW THAT HE HAS BEEN IN MY COURT ON OCCASION IN DEFENSE OF DEFENDANTS. I KNOW HIM FROM OBSERVATION, I KNOW HIM BY REPUTATION AS A THOROUGHLY KNOWLEDGEABLE AND COMPETENT CRIMINAL DEFENSE ATTORNEY.

I CANNOT FIND THAT THE TWO OF YOU HA\'E REACHED THAT POINT IN THE BREAKDOWN OF YOUR COMMUNICATION SO THAT YOUR CONSTITUTIONAL RIGHTS FOR

COMPETENT REPRESENTATION HAVE BEEN PREJUDICED. I AM THEREFORE COMPELLED ON WHAT YOU'VE PRESENTED AND THE COMMENTS AND RESPONSES THAT I HAVE FROM MR. SEIFER TO DENY YOUR MOTION AND I DO SO HEREWITH.

NOW, YOU ARE SAYING TO ME NOW YOU WANT TO REPRESENT YOURSELF?

THE DEFENDANT: YES, SIR. I AM LEFT WITH NO CHOICE IN THE MATTER.

THE COURT: WELL, HAVE YOU RECEIVED A COPY OF OUR FARETTA QUESTIONNAIRE?

THE DEFENDANT: NO, SIR, I HAVEN'T.

THE COURT: ALL RIGHT.

WHEN IS YOUR TRIAL DATE?

MR. SEIFER: YOUR HONOR, THE CALENDAR RIGHT NOW IS 4-20-90. THAT WOULD BE THE 50TH DAY.

THE COURT: 4-20 IS 50 OF 60?

MR. SEIFER: YES, YOUR HONOR.

THE COURT: WHERE ARE YOU HOUSED, MR. ROBBINS?

THE DEFENDANT: AT THE L.A. COUNTY RIGHT NOW.

THE COURT: CENTRAL?

THE DEFENDANT: YES, SIR.

THE COURT: ALL RIGHT.

WELL, WHAT I WANT TO DO IS GIVE YOU A COPY OF A QUESTIONNAIRE THAT I WOULD LIKE FOR YOU TO READ AND TO THINK ABOUT BECAUSE IT IS GOING TO GIVE YOU SOME IDEA OF THE KIND OF QUESTIONS THAT I WANT TO ASK YOU WHEN YOU AND I TALK ABOUT WHETHER YOU SHOULD REPRESENT YOURSELF OR NOT.

THE FIRST THING I AM GOING TO DO IS TO TRY TO TALK YOU OUT OF IT FOR MANY

REASONS THAT YOU WILL SEE IN THE FORM OF THE QUESTIONS --

THE DEFENDANT: YES, SIR, I UNDERSTAND THAT.

THE COURT: -- THAT APPEAR ON THE QUESTIONNAIRE.

YOU DON'T HAVE TO FILL IT OUT. I JUST WANT YOU TO SEE IT AND CONSIDER IT, AND THEN I WOULD LIKE TO GET BACK WITH YOU IN A WEEK, AND WE WILL TALK ABOUT IT.

IS THAT AGREEABLE?

THE DEFENDANT: YES, SIR, IT IS.

THE COURT: YES, MR. SEIFER.

MR. SEIFER: YOUR HONOR, BECAUSE OF THE CALENDAR, REGARDLESS OF WHO ENDS UP REPRESENTING MR. ROBBINS, WHETHER IT IS MYSELF OR MR. ROBBINS IN PRO PER OR PERHAPS SOMEBODY THAT HE RETAINS ULTIMATELY, I WOULD ASK THE COURT TO SET

THIS MATTER SOONER THAN A WEEK FOR A HEARING BECAUSE THE CLOCK IS RUNNING.

I HAVE GOT AN INVESTIGATOR GOING ON THIS CASE AND I HAVE GOT WORK THAT I AM DOING. MR. ROBBINS, IF HE REPRESENTS HIMSELF, WILL HAVE ADDITIONAL WORK AND I HAVE SPOKEN TO MR. ROBBINS.

AS THE COURT NOTES, HE AND I HAVE SOME SUBSTANTIAL DISAGREEMENTS ON A NUMBER OF POINTS, BUT I THINK MR. ROBBINS CAN LOOK AT THE FARETTA QUESTIONNAIRE AND COMPREHEND THE SCOPE OF THE COURT'S INQUIRY. AND I WOULD SUGGEST, SIR, WITH ALL RESPECT, THAT HE ISN'T GOING TO NEED A WEEK TO DO THAT.

THE COURT: ALL RIGHT.

I AM PERFECTLY WILLING TO GET BACK TO IT EARLIER. AND I THINK AS YOU POINT

OUT, IN FAIRNESS TO HIM HE SHOULD HAVE AS MUCH TIME.

ONE THING YOU HAVE GOT TO CONSIDER, MR. ROBBINS, IS YOU GET NO HELP FORM THE PUBLIC DEFENDER'S OFFICE. THERE ISN'T GOING TO BE ANYBODY HELP YOU GET Y0UR WITNESSES PULLED TOGETHER, THERE ISN'T GOING TO BE ANYBODY TO PREPARE SUBPOENAS FOR YOU. THERE ISN'T GOING TO BE ANYBODY TO HELP YOU ARRANGE FOR INTERVIEWS.

YOU HAVE GOT ALL THAT TO DO FOR YOURSELF.

THE DEFENDANT: YES, SIR.

THE COURT: AND YOU GET NO HELP FROM ME AND YOU WILL BE UP AGAINST A PRACTICED, EXPERIENCED TRIAL LAWYER AND YOU ARE GOING TO MAKE MISTAKES AND YOU ARE GOING TO LEAVE THINGS OUT AND YOU

ARE GOING TO PREJUDICE THE RECORD AND I AM NOT BEING CRITICAL OF YOU.

THE DEFENDANT: YES, SIR.

THE COURT: BUT THIS IS A PROFESSION.

THE DEFENDANT: YES, SIR.

THE COURT: THAT PEOPLE STUDY YEARS TO BECOME COMPETENT IN.

THE DEFENDANT: YES, SIR. THAT IS WHY I REQUESTED ANOTHER ATTORNEY.

THE COURT: OKAY.

THIS IS WEDNESDAY. LET'S GET BACK TOGETHER NEXT MONDAY. THE REST OF THE WEEK IS PRETTY JAMMED UP FOR ME.

THE DEFENDANT: NEXT MONDAY, SIR.

THE COURT: LET'S GET BACK ON MONDAY THE 12TH.

MR. SEIFER: YOUR HONOR, I HAVE GOT A MURDER PRELIM OR MANSLAUGHTER PRELIM THAT HAS BEEN ASSIGNED TO ME DOWNTOWN

ON THE 12TH. AND IF I KNOW HOW THINGS GO DOWN THERE, IT IS GOING TO RUN ALL DAY BEFORE THEY GET ANYTHING GOING.

THE COURT: WE CAN GET BACK TOGETHER HERE ON FRIDAY AFTERNOON.

MR. SEIFER: THAT WOULD BE FINE WITH ME, YOUR HONOR.

THE COURT: IS THAT AGREEABLE, MR. ROBBINS?

THE DEFENDANT: YES, SIR.

THE COURT: LET'S CALENDAR THIS FOR FRIDAY AT 1:30.

MR. SEIFER: THANK YOU, YOUR HONOR.

THE COURT: THAT WILL BE THE ORDER. WE WILL CONTINUE THE MATTER FOR FARETTA HEARING TO 1:30 ON FRIDAY.

THE DEFENDANT: THANK YOU, YOUR HONOR.

(AT 2:25 PM., THE PROCEEDINGS WERE CONTINUED TO FRIDAY, MAY 9, 1990, AT 1:30 P.M.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT SE J Hon. C. ROBERT SIMPSON, JR., JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	NO. A 481636
PLAINTIFF,	)	
v.	)	
LEE ROBBINS,	)	
DEFENDANT.	)	

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

I, KATHLEEN H. ADAMS, OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES, 12 THROUGH 30, INCLUSIVE, COMPRISE A FULL, TRUE AND CORRECT TRANSCRIPT OF THE MARSDEN PROCEEDINGS

HELD IN DEPARTMENT SOUTHEAST J ON WEDNESDAY, MARCH 7, 1990.

DATED THIS 14TH DAY OF NOVEMBER, 1990.

KATHLEEN H. ADAMS, CSR #2853
OFFICIAL REPORTER

NORWALK, CALIFORNIA;

FRIDAY, MARCH 9, 1990*

1:38 P.M.

DEPARTMENT SE J HON. C. ROBERT SIMPSON, JR., JUDGE

APPEARANCES:

THE DEFENDANT WITH HIS COUNSEL, RALPH SEIFER, DEPUTY PUBLIC DEFENDER OF LOS ANGELES COUNTY, TIA B. GRAVES, DEPUTY DISTRICT ATTORNEY OF LOS ANGELES COUNTY, REPRESENTING THE PEOPLE OF THE STATE OF CALIFORNIA.

(KATHLEEN H. ADAMS, OFFICIAL REPORTER.)

(THE MARSDEN PROCEEDINGS, PAGES 1 THROUGH 30, WERE PREPARED UNDER SEPARATE COVER FOR APPELLATE PURPOSES, SEALED IN AN ENVELOPE, AND FILED ALONG WITH THE APPEAL

TRANSCRIPT, PURSUANT TO RULE 1, LOCAL RULES OF THE COURTS OF APPEAL.)

THE COURT: GOOD AFTERNOON, MR. ROBBINS.

THE DEFENDANT: GOOD AFTERNOON, SIR.

THE COURT: LET THE RECORD SHOW THAT LEE ROBBINS IS IN COURT REPRESENTED BY HIS ATTORNEY, PUBLIC DEFENDER RALPH SEIFER. THE PEOPLE ARE REPRESENTED HERE BY DEPUTY DISTRICT ATTORNEY TIA GRAVES.

MR. ROBBINS, THE MATTER IS BEFORE THE COURT THIS AFTERNOON IN REGARD TO YOUR MOTION TO PROCEED PRO PER.

DO YOU STILL WISH TO DO THAT?

THE DEFENDANT: YES, SIR, I DO. I HAVE NO OTHER CHOICE UNLESS THE COURT IS

GOING TO APPOINT THE ATTORNEY I HAVE REQUESTED.

THE COURT: WELL, IF I APPOINT AN ATTORNEY, IT WILL BE THE PUBLIC DEFENDER'S OFFICE. THAT IS THE ONLY ALTERNATIVE I HAVE.

THE DEFENDANT: EVEN THOUGH I HAVE INDICATED THERE ARE CONFLICTS INVOLVED, SIR?

THE COURT: WELL, THE PUBLIC DEFENDER'S OFFICE DOESN'T REGARD ANYTHING IN THEIR RELATIONSHIP WITH YOU AS BEING IN CONFLICT WITH YOUR BEST INTERESTS. THE PUBLIC DEFENDER'S OFFICE REPRESENTS TO ME THAT THEY HAVE YOUR BEST INTERESTS AT HEART AND THAT THEY WILL DO EVERYTHING WITHIN THEIR POWER AND RESOURCE TO REPRESENT YOU COMPETENTLY HERE.

I KNOW WHAT YOU HAVE TOLD ME ABOUT YOUR FEELINGS TOWARD MR. SEIFER. BUT YOU MAY NOT THINK MR. SEIFER IS THE GREATEST FELLOW YOU EVER MET, YOU MAY NOT EVEN LIKE HIM, BUT THAT IS NOT CONTROLLING HERE.

THE DEFENDANT: YES, SIR.

THE COURT: YOU'RE IN CONTROL OF YOUR DEFENSE. AND IF YOU AGREE WITH SOMETHING MR. SEIFER BRINGS TO YOU, YOU SAY SO. IF YOU DISAGREE WITH SOMETHING HE BRINGS TO YOU, YOU TELL HIM NO.

THE DEFENDANT: YES, SIR.

THE COURT: DO IT THIS WAY OR THAT WAY. OR IF HE DOESN'T DO IT THE WAY YOU HAVE ASKED HIM TO DO IT, SAY NO AND REQUIRE HIM TO GO BACK.

THE DEFENDANT: WE HAVE BEEN HAVING THAT PROBLEM, DISCUSSIONS PERTAINING TO

THE CASE, YOUR HONOR. AND WHATEVER I SAY I WANT SOMETHING DONE OR NOT DONE, IT IS IMMATERIAL. MR. SEIFER PROCEEDS ON HIS OWN.

HE IS SUPPOSED TO BE WORKING IN MY BEST INTERESTS. I DON'T FEEL THAT THAT IS BEING DONE.

THE COURT: ON THE BASIS OF THE DISCUSSION WE HAD THE OTHER DAY, MR. ROBBINS, WHEN YOU EXPRESSED YOUR SPECIFIC CONCERNS AND I ASKED MR. SEIFER TO RESPOND AND HE DID, I CAN COME TO NO OTHER CONCLUSION BUT THAT WHAT MR. SEIFER IS DOING IS IN YOUR BEST INTERESTS AND --

MR. SEIFER.

MR. SEIFER: YOUR HONOR, EXCUSE ME. I APOLOGIZE FOR INTERRUPTING THE COURT.

IF WE ARE GOING TO DISCUSS THIS CASE IN ANY DETAIL, I WOULD BE ASKING IF THE PEOPLE WOULD BE EXCUSED FROM THE COURTROOM.

THE COURT: I THINK WE WILL NOT BE DISCUSSING THE CASE IN DETAIL.

LET ME SUMMARIZE AND GIVE YOU MY BOTTOM LINE. MR. SEIFER IS A COMPETENT, KNOWLEDGEABLE, HARDWORKING, EFFECTIVE PUBLIC DEFENDER. I AM CONVINCED THAT HE HAS YOUR BEST INTERESTS AT HEART. I AM CONVINCED HE CAN GIVE YOU A CONSTITUTIONALLY COMPETENT DEFENSE.

YOU HAVE A RIGHT TO REPRESENT YOURSELF. AND AS I MENTIONED TO YOU THE OTHER DAY, THE ONLY THING I CAN DO IS TO TRY TO TALK YOU OUT OF IT. IF YOU NEEDED SURGERY ON YOUR BRAIN, YOU WOULDN'T TRY TO DO IT YOURSELF.

THE DEFENDANT: I UNDERSTAND THAT, SIR. THAT'S WHY I DON'T WANT TO REPRESENT MYSELF. I AM ASKING THE COURT TO PLEASE APPOINT ANOTHER ATTORNEY AND HELP ME.

THE COURT: WELL, THE ATTORNEY THAT I MUST APPOINT FOR YOU --

THE DEFENDANT: YES, SIR.

THE COURT: -- IS THE OFFICE OF THE PUBLIC DEFENDER.

IF YOU CAN AFFORD TO HIRE YOUR OWN ATTORNEY --

THE DEFENDANT; I WOULD HAVE DONE SO BY NOW, YOUR HONOR.

THE COURT: -- AND PAY FOR HIM, THEN OF COURSE THAT IS YOUR PREROGATIVE.

THE DEFENDANT: YES, SIR.

THE COURT: YOU ARE AT COMPLETE LIBERTY TO DO THAT. BUT THE ONLY AUTHORITY I HAVE UNDER ALL THE FACTS

AND CIRCUMSTANCES BEFORE ME IS TO APPOINT OR REAPPOINT THE OFFICE OF THE PUBLIC DEFENDER.

THE DEFENDANT: EVEN THOUGH I HAVE STATED THE CONFLICTS INVOLVED DUE TO THE FACT THE EX-MAYOR OF CITY OF CERRITOS --

THE COURT: DON'T GET INTO THE FACTS OF THE CASE.

YES, EVEN THOUGH YOU HAVE DESCRIBED FOR ME WHAT YOU CONSIDER TO BE THE PROBLEMS THAT YOU ARE HAVING, THE CONCLUSIONS THAT I HAVE COME TO IS THAT THE ANSWERS THAT MR. SEIFER HAS GIVEN ME INDICATE TO ME THAT WHAT HE IS DOING IS IN YOUR BEST INTERESTS.

AS I SAY, YOU MAY NOT COUNT MR. SEIFER AMONG YOUR FAVORITE PEOPLE YOU HAVE EVER KNOWN IN THE WORLD, BUT I AM

PERSUADED THAT FOR YOUR PURPOSES AS A DEFENSE LAWYER, HE'S PERFECTLY AND TOTALLY COMPETENT IN PROVIDING YOU WITH THE BEST DEFENSE I KNOW.

THE DEFENDANT: YOUR HONOR, WOULD IT BE POSSIBLE FOR ME TO TALK TO MR. SEIFER ALONE FOR A FEW MINUTES?

THE COURT: CERTAINLY WOULD BE. I INVITE YOU TO DO THAT. IN FACT I WILL EXCUSE MYSELF AND THE DISTRICT ATTORNEY AND WE WILL DO THE SAME --

MR. SEIFER: MAYBE WE MIGHT --

THE COURT: YOU CAN USE THESE COURTROOM FACILITIES RIGHT HERE IF YOU WISH BECAUSE I HAVE OTHER WORK TO DO.

MR. SEIFER: IS THE TANK OPEN? ARE THERE OTHER PEOPLE IN THE TANK?

THE BAILIFF: THERE ARE PEOPLE IN THE TANK.

MR. SEIFER: CAN WE GO IN THE SIDE POCKET?

THE BAILIFF: YES.

THE COURT: ALL RIGHT.

(RECESS.)

THE COURT: BACK ON THE RECORD IN THE MATTER OF LEE ROBBINS.

MR. ROBBINS, HAVE YOU TALKED TO MR. SEIFER?

THE DEFENDANT: YES, SIR, I HAVE.

THE COURT: WHAT WAS THE OUTCOME OF THAT CONVERSATION?

THE DEFENDANT: I AM TO REPRESENT MYSELF, SIR.

THE COURT: YOU ARE GOING TO REPRESENT YOURSELF?

THE DEFENDANT: YES, SIR.

THE COURT: ALL RIGHT.

I WOULD REPEAT ONLY BY WAY OF EMPHASIS THAT I THINK YOU ARE MAKING A MISTAKE.

THE DEFENDANT: YES, SIR.

THE COURT: OKAY.

YOU'RE AWARE, ARE YOU NOT, OF THE PENALTIES INVOLVED HERE IF YOU ARE FOUND GUILTY?

THE DEFENDANT: YES, SIR. I COMPLETED THAT FORM.

THE COURT: YOU DON'T HAVE TO TURN IT IN. I JUST WANTED YOU TO LOOK AT IT.

YOU UNDERSTAND THAT THE COURT CAN'T HELP YOU --

THE DEFENDANT: YES, SIR.

THE COURT: -- WITH ANYTHING YOU DO.

THE DEFENDANT: YES, SIR.

THE COURT; I CAN'T GIVE YOU ANY ADVICE, I CAN'T GIVE YOU ANY COACHING, I CAN'T RAISE ANY FLAGS FOR YOU.

THE DEFENDANT: YES, SIR.

THE COURT: I HAVE TO TREAT YOU JUST THE WAY I DO THE DISTRICT ATTORNEY WHO IS GOING TO BE HERE WHO IS A PRACTICED, SKILLED, KNOWLEDGEABLE PROSECUTING ATTORNEY.

YOU UNDERSTAND THAT?

THE DEFENDANT: YES, SIR.

THE COURT: YOU UNDERSTAND THAT YOU ARE PROBABLY GOING TO MAKE MISTAKES THAT MIGHT PREJUDICE YOU, YOU ARE GOING TO LEAVE THINGS OUT OF THE RECORD THAT SHOULD BE THERE, ON APPEAL YOU ARE GOING TO FIND DEFICIENCIES IN THE RECORD THAT WOULDN'T BE THERE IF YOU WERE BEING REPRESENTED.

YOU UNDERSTAND ALL THAT?

THE DEFENDANT: YES, SIR. I AM HOPING TO DO IT RIGHT THE FIRST TIME.

THE COURT: YOU ARE ALSO AWARE THAT ON APPEAL YOU CANNOT -- YOU ARE ENTITLED TO AN ATTORNEY ON APPEAL IF YOU WANT ONE, BUT ON APPEAL YOU CANNOT RAISE THE POINT THAT, IF YOU REPRESENT YOURSELF, YOU WERE NOT COMPETENTLY REPRESENTED.

THE DEFENDANT: YES, SIR, I UNDERSTAND THAT.

THE COURT: YOU UNDERSTAND THAT ALSO?

THE DEFENDANT: YES, SIR.

THE COURT: ALL RIGHT.

IF YOU DECIDE LATER ON THAT YOU WANT ME TO APPOINT AN ATTORNEY, YOU UNDERSTAND IT WILL BE THE PUBLIC DEFENDER'S OFFICE.

THE DEFENDANT: YES, SIR. MR. SEIFER INFORMED ME OF THAT.

THE COURT: IF YOU DECIDE LATER ON YOU WANT TO BRING YOU OWN ATTORNEY IN, I WILL ACCOMMODATE YOU WITH ONE, POSSIBLY TWO CONTINUANCES, BUT NO MORE. YOU ARE GOING TO HAVE TO BE READY TO GO TO TRIAL.

THE DEFENDANT: YES, SIR.

THE COURT: YOU WON'T HAVE ANYBODY ASSISTING YOU WITH SUBPOENAS, BRINGING WITNESSES IN FOR INTERVIEW, YOU WON'T HAVE ANY ASSISTANCE OF ANY KIND FROM THE PUBLIC DEFENDER'S OFFICE OR ANYBODY ELSE.

YOU ALSO UNDERSTAND THAT?

THE DEFENDANT: YES, SIR.

THE COURT: ALL RIGHT.

THE PENALTY I GUESS IN THIS MATTER, MR. SEIFER, IS 25 YEARS TO LIFE?

THE DEFENDANT: TWENTY-SEVEN I BELIEVE, YOUR HONOR.

MR. SEIFER: TWENTY-FIVE TO LIFE ON THE MURDER COUNT, YOUR HONOR, AND TWO YEARS IF IT IS SHOWN THAT -- TWO YEARS ADDITIONAL IF IT IS SHOWN THAT THE DEFENDANT HAD A GUN. SO IT COULD BE 27 TO LIFE.

THE COURT: ALL RIGHT.

TWENTY-SEVEN TO LIFE.

MR. SEIFER: THERE IS ALSO A RELATIVELY MINOR ASPECT OF THE CASE, YOUR HONOR, IN THAT THERE IS A 487 COUNT.

THE COUNT: A WHAT, I AM SORRY?

MR. SEIFER: THERE IS A 487 COUNT, A THEFT COUNT INVOLVING A TRUCK, YOUR

HONOR, BUT THAT IS RELATIVELY A MINOR THEME IN ALL OF THIS.

THE COURT; ALL RIGHT.

HOW FAR ALONG DID YOU GET IN SCHOOL, MR. ROBBINS?

THE DEFENDANT: COUPLE OF YEARS OF COLLEGE, YOUR HONOR.

THE COURT: JUNIOR COLLEGE?

THE DEFENDANT: I WENT TO JUNIOR COLLEGE, CERRITOS COLLEGE, AND KANSAS STATE UNIVERSITY IN KANSAS.

THE COURT: WHAT WAS YOUR FIELD OF STUDY THERE?

THE DEFENDANT: I WENT THROUGH THE SHERIFF'S ACADEMY IN KANSAS AND I WAS THIRD HIGHEST IN MY CLASS AND I STUDIED ADMINISTRATION OF JUSTICE HERE AT CERRITOS COLLEGE.

THE COURT: SO YOU HAVE HAD SOME ACADEMIC BACKGROUND IN LAW ENFORCEMENT?

THE DEFENDANT: YES, SIR.

THE COURT: ENOUGH TO MAKE YOU REALIZE THE IMPORTANCE OF HAVING AN ATTORNEY.

THE DEFENDANT: DEFINITELY, YOUR HONOR.

THE COURT: WELL, YOU HAVE THE RIGHT TO REPRESENT YOURSELF.

THE DEFENDANT: YOUR HONOR, WOULD IT BE POSSIBLE TO SET THE PRETRIAL APPROXIMATELY 60 DAYS FROM NOW?

THE COURT: THERE IS A LITTLE RECORD OF WHAT WE HAVE BEEN TALKING ABOUT HERE THAT I WOULD LIKE FOR YOU TO LOOK OVER AND SIGN IF IT FAIRLY REFLECTS WHAT WE'VE TALKED ABOUT HERE.

THE DEFENDANT: YES, SIR.

THE COURT: AND IT IS ONLY A PAGE. IF YOU ARE WILLING TO SIGN THIS, I AM GOING TO FIND THAT YOU HAVE PROPERLY WAIVED YOUR RIGHT TO BE REPRESENTED.

WOULD YOU HAND THIS TO MR. ROBBINS, PLEASE.

MS. GRAVES: YOUR HONOR, WITH THE COURT'S PERMISSION, SINCE MR. ROBBINS, IF HE -- HE WILL BE ALLOWED TO GO PRO PER, WILL BE DEALING WITH OUR OFFICE DIRECTLY AS OPPOSED TO THROUGH AN ATTORNEY. WHEN MR. ROBBINS IS FINISHED SIGNING THAT, I WOULD JUST REQUEST, IF I COULD, TO INFORM HIM OF A FEW THINGS.

THE COURT: YES.

MS. GRAVES: AND ASK HIM A FEW ADDITIONAL QUESTIONS ABOUT THE DECISION HE HAS MADE.

THE COURT: YES.

WOULD YOU LOOK THAT OVER, MR. ROBBINS. AND IF THAT FAIRLY REFLECTS WHAT YOU AND I HAVE TALKED ABOUT, IF YOU WOULD SIGN IT AND DATE IT, I WOULD APPRECIATE IT.

THE DEFENDANT: YES, SIR.

THE COURT: ALL RIGHT.

VERY GOOD.

IF YOU WILL HAND THAT BACK TO THE CLERK OR TO THE BAILIFF.

THE CLERK HAS HANDED TO ME THE RECORD OF THE FARETTA WARNINGS THAT I HAVE GIVEN TO MR. ROBBINS HERE TODAY. MR. ROBBINS HAS DATED AND SIGNED THAT RECORD.

AND BASED UPON HIS DOING SO, I AM GOING TO FIND THAT MR. ROBBINS HAS KNOWINGLY, INTELLIGENTLY, AND

VOLUNTARILY WAIVED HIS RIGHT TO BE REPRESENTED BY AN ATTORNEY AS TO THE CHARGES FILED AGAINST HIM, WHICH INCLUDE PENAL CODE SECTION 187(A), MURDER, AND PENAL CODE SECTION 487.3, THEFT.

I WILL THEREFORE DATE AND SIGN THIS RECORD AND ENTER THIS RECORD INTO THE PROCEEDINGS.

AND, MR. ROBBINS, YOU ARE HEREWITH AUTHORIZED TO REPRESENT YOURSELF IN PROPRIA PERSONA IN THIS MATTER.

THE DEFENDANT: THANK YOU, YOUR HONOR.

MR. SEIFER: PUBLIC DEFENDER IS RELIEVED, YOUR HONOR?

THE COURT: PUBLIC DEFENDER IS RELIEVED.

MR. SEIFER, IF YOU HAVE DOCUMENTATION THAT YOU CAN TURN OVER TO MR. ROBBINS, YOU MIGHT DO THAT NOW.

MR. SEIFER: YOUR HONOR, IF I MAY, I AM GOING TO GIVE MR. ROBBINS MY COPY OF THE PRELIMINARY HEARING, THE INFORMATION AND THE AMENDED INFORMATION, SOME INVESTIGATION REQUESTS WHICH WERE GENERATED BY ME, A MEDICAL REPORT FROM DR. JOHN MEAD.

MY COPY OF DR. EISENBERG'S REPORT I THINK WAS TAKEN BY THE COURT A FEW DAYS AGO FOR THE COURT FILE.

I HAVE SPECIAL MOTIONS HERE. I HAVE MISCELLANEOUS POLICE REPORTS AND SUPPLEMENTAL REPORTS THAT I AM GOING TO TURN OVER TO MR. ROBBINS AND THE RESULTS OF THE INVESTIGATION WORK WHICH WERE DONE BY THE PUBLIC DEFENDER'S OFFICE.

THE COURT: ALL RIGHT.

VERY GOOD.

NOW --

MR. SEIFER: EVERYTHING THAT I HAVE, YOUR HONOR, EXCEPT FOR MISCELLANEOUS NOTES AND DRAFT MATERIAL IN MY FILE.

THE COURT: VERY GOOD.

NOW, MR. ROBBINS, I AM GOING TO REQUEST THE SHERIFF OF LOS ANGELES COUNTY TO MAKE THE LIBRARY AVAILABLE TO YOU AND TO HOUSE YOU APPROPRIATELY.

THE DEFENDANT: YES, SIR.

THE COURT: YOU ARE ENTITLED TO A SMALL STIPEND, I BELIEVE $40.

THE DEFENDANT: FOR LEGAL SERVICES, SUPPLIES, YES, SIR.

THE COURT: AND I WILL ALSO REQUEST THAT THAT BE PAID TO YOU AS SOON AS ARRANGEMENTS CAN BE MADE.

THE DEFENDANT: THANK YOU, YOUR HONOR.

THE COURT: VERY WELL.

MISS GRAVES, WOULD YOU CARE TO INQUIRE?

MS. GRAVES: JUST --

THE COURT: MR. SEIFER, YOUR RELIEVED.

MR. SEIFER: THANK YOU, YOUR HONOR.

MS. GRAVES: MS. ROBBINS, JUDGE SIMPSON HAS ALREADY INDICATED THAT YOU CAN GO PRO PER BECAUSE YOU HAVE THAT RIGHT TO REPRESENT YOURSELF.

BUT AS A REPRESENTATIVE OF THE DISTRICT ATTORNEY'S OFFICE WHO IS GOING TO BE PROSECUTING YOU, I JUST WANT TO MAKE SURE THAT YOU UNDERSTAND A FEW THINGS ABOUT THAT AND JUDGE SIMPSON MAY ALREADY HAVE MADE THESE THINGS PERFECTLY CLEAR TO YOU.

THE FIRST THING IS THAT MR. FAGAN, WHO YOU PROBABLY HAVE SEEN IN COURT, IS THE DISTRICT ATTORNEY ON THIS CASE. HE HAS BEEN THROUGH 4 YEARS OF COLLEGE, HE HAS BEEN THROUGH 3 YEARS OF LAW SCHOOL, HE HAS PASSED THE BAR EXAM, AND HE HAS BEEN A DISTRICT ATTORNEY FOR OVER 15 YEARS AND HAS TRIED OVER A 170 FELONY JURY TRIALS.

HE IS ONE OF THE BEST TRIAL ATTORNEYS THAT OUR OFFICE HAS. YOU ARE GOING TO HAVE TO REPRESENT YOURSELF AGAINST SOMEONE WHO IS MUCH MORE AWARE OF THE LAW THAN YOU ARE.

HIS IS SKILLED IN TERMS OF PRESENTATION BEFORE A JURY. BASICALLY KNOWS THE INS AND OUTS OF BEING IN A COURTROOM. THAI IS WHO YOU ALONE ARE

GOING TO BE MATCHED AGAINST WITHOUT AN ATTORNEY TO HELP YOU.

ARE YOU AWARE OF THAT?

THE DEFENDANT: YES, MA'AM.

MS. GRAVES: AND KNOWING THAT, YOU STILL WISH TO REPRESENT YOURSELF?

THE DEFENDANT: I HAVE NO CHOICE.

MS. GRAVES: YOU INDICATED WHEN JUDGE SIMPSON WAS ASKING YOU EARLIER THAT YOU HOPE -- THIS WAS A QUOTE, "I HOPE TO DO IT RIGHT THE FIRST TIME."

WELL, YOU ARE NOT GOING TO GET A SECOND CHANCE. IF YOU ARE CONVICTED, YOU DON'T GET TO COME BACK AND DO IT ALL OVER AGAIN BECAUSE YOU CONVICTED YOURSELF. YOU REPRESENTED YOURSELF. YOU GIVE UP THAT RIGHT. YOU ONLY GET TO DO IT ONE TIME WHETHER YOU DO IT RIGHT OR DO IT WRONG.

DO YOU UNDERSTAND THAT?

THE DEFENDANT: YES, MA'AM.

MS. GRAVES. AND YOU STILL WANT TO REPRESENT YOURSELF?

THE DEFENDANT: YES, MA'AM.

MS. GRAVES: WHEN YOU REPRESENT YOURSELF, I KNOW JUDGE SIMPSON HAS INDICATED THAT HE IS NOT GOING TO GIVE YOU ANY BREAKS. HE IS GOING TO TREAT YOU THE SAME WAY AS IF YOU WERE REPRESENTED BY AN ATTORNEY.

THE SAME THINGS GOES FOR OUR OFFICE. MR. FAGAN IS NOT GOING TO BACK DOWN AND CHANGE THE WAY HE TRIES THIS CASE BECAUSE YOU ARE REPRESENTING YOURSELF. HE IS GOING TO TRY IT AND BE JUST AS TOUGH. HE WILL DO EVERYTHING THAT HE CAN WITHIN THE ETHICAL BOUNDARIES TO PROSECUTE YOU AND YOUR

PRO PER IS NOT GOING TO CHANGE THE WAY HE PROSECUTES IT EITHER.

DO YOU UNDERSTAND THAT?

THE DEFENDANT: YES, MA'AM.

MS. GRAVES: AND YOU STILL WANT TO REPRESENT YOURSELF?

THE DEFENDANT: YES, MA'AM.

MS. GRAVES: FINALLY, WHEN YOU DO REPRESENT YOURSELF, YOU ARE ACTING AS YOUR OWN ATTORNEY AND THAT MEANS THAT ALL LEGAL MOTIONS NEED TO BE FILED IN A TIMELY FASHION AND IN WRITING.

WE ARE NOT GOING TO GIVE YOU BREAKS BECAUSE YOU REPRESENT YOURSELF BY WAIVING NOTICE OR WAIVING WRITTEN NOTICE. IF YOU MAKE MOTIONS IN THIS CASE, WE ARE GOING TO NEED THEM IN WRITING AND IN A PROPER FORM THAT CAN BE

SUBMITTED TO THE COURT AND WE ARE NOT GOING TO TREAT YOU ANY DIFFERENTLY.

DO YOU UNDERSTAND THAT?

THE DEFENDANT: YES, MA'AM.

MS. GRAVES: AND YOU STILL WANT TO REPRESENT YOURSELF KNOWING ALL OF THOSE THINGS THAT I TOLD YOU?

THE DEFENDANT: YES, MA'AM.

MS. GRAVES: THIS IS NOT GOING TO BE AN EQ[illegible]AL MATCH.

THE DEFENDANT: I REALIZE THAT, MA'AM.

MS. GRAVES: AND GIVING UP YOUR RIGHT TO APPEAL EVEN IF YOU MAKE A MISTAKE OR MORE THAN ONE. IF YOU MAKE A MISTAKE EVERY DAY YOU ARE IN COURT, YOU CAN'T APPEAL.

THE DEFENDANT: IT'S THE ONLY CHANCE I GOT.

MS. GRAVES: THANK YOU,

THE COURT: VERY WELL.

WELL, LET'S PROCEED TO SET THE MATTER FOR PRETRIAL AND TRIAL. I DON'T THINK WE HAVE --

THE CLERK: YES, YOUR HONOR. WE HAVE A TRIAL SETTING OF APRIL 20TH, 50 OF 60.

THE COURT: APRIL 20?

THE CLERK: YES, YOUR HONOR.

THE COURT: IS WHAT?

THE CLERK: 50 OF 60.

THE COURT: 50 OF 60. THAT GIVES YOU SIX WEEKS TO BE READY FOR TRIAL.

IS THAT GOING TO BE ENOUGH?

THE DEFENDANT: SIX WEEKS APRIL 20TH?

THE COURT: YES.

THE DEFENDANT: THAT WOULD BE FINE FOR PRETRIAL, YOUR HONOR. I HAVE SOME MOTIONS I WISH TO ENTER WITH THE COURT

ON THAT DATE AND ON THAT DATE SET A TRIAL DATE IF THAT WOULD BE ACCEPTABLE.

THE COURT: WELL, FOR PURPOSES OF MOTIONS THEN, I WOULD LIKE TO MOVE THAT DOWN A LITTLE BIT EARLIER THAN SIX WEEKS.

MS. GRAVES: I WOULD ALSO MAKE THAT REQUEST. TYPICALLY PERHAPS WITHIN 30 DAYS OF TODAY'S DATE WE COULD HAVE A PRETRIAL DATE SET FOR MOTIONS AND THEN SEE HOW THE PROGRESS IS GOING.

THE COURT: I WOULD LIKE TO SET PRETRIAL FOR MOTIONS 30 DAYS OUT.

THE DEFENDANT: ALL RIGHT, YOUR HONOR.

THE COURT: ALL RIGHT.

WE WILL ESTABLISH THE DATE FOR PRETRIAL AS APRIL 9. THAT WILL BE A MONDAY. ALL RIGHT.

AND ANY SUCH MOTIONS, MR. ROBBINS, WILL HAVE TO BE FILED WITH ME AND WITH THE DISTRICT ATTORNEY'S OFFICE IN A TIMELY MANNER.

MR. SEIFER: THANK YOU.

THE DEFENDANT: THANK YOU.

MS. GRAVES: YOUR HONOR, BECAUSE MR. FAGAN HAS THE FILE, I DON'T KNOW WHAT TIME FRAME WE ARE DEALING WITH. WAS THERE A TRIAL DATE OF APRIL 20TH ALREADY SET?

THE COURT: I AM SO ADVISED THAT WE HAVE APRIL 20 AT 50 OF 60.

MS. GRAVES: PERHAPS WE COULD KEEP APRIL 20TH ON THE JURY TRIAL CALENDAR AS 50 OF 60. PRETRIAL OF APRIL 9TH WOULD GIVE MR. ROBBINS AN OPPORTUNITY TO SUBMIT MOTIONS. AND THEN AT THAT DATE MR. FAGAN COULD DETERMINE, DEPENDING UPON

THE READINESS OF MR. ROBBINS, WHETHER OR NOT TO CHANGE THAT.

THE COURT: I WOULD LIKE TO DO THAT. LEAVE THE TRIAL AT APRIL 20 WITH THE UNDERSTANDING THAT DEPENDING UPON WHAT HAPPENS AT THE MOTIONS --

THE DEFENDANT: FINE, YOUR HONOR.

THE COURT: AND IN FAIRNESS TO YOU, I AM TREATING YOU AS I WOULD ANY NEW COUNSEL ARRIVING ON THE SCENE.

THE DEFENDANT: YES, SIR.

THE COURT: I WILL GIVE YOU A CHANCE TO ASSESS THE SITUATION AND TELL ME ON THE 9TH OF APRIL WHETHER YOU THINK YOU ARE READY TO GO ON TRIAL ON THE 20TH OR WHETHER YOU WOULD LIKE TO HAVE A REASONABLE CONTINUANCE AT THAT TIME.

THE DEFENDANT: YES, YOUR HONOR.

THE COURT: ALL RIGHT.

VERY GOOD.

THE DEFENDANT: AM I ALSO ENTITLED TO HAVE ANY INVESTIGATIVE WORK DONE, YOUR HONOR? AND HOW WILL I HAVE SUBPOENAS READY TO GO?

THE COURT: NO, NOT UNLESS THE SHERIFF'S OFFICE HAS A FACILITY THAT IS ABLE TO ACCOMMODATE YOU ON THAT AND I DON'T KNOW THAT THEY DO.

THE DEFENDANT: I WAS UNDER THE IMPRESSION THAT I WAS ALLOWED CERTAIN AMOUNT OF MONEY TO HIRE AN INVESTIGATOR TO DO INVESTIGATIVE WORK.

MS. GRAVES: THAT'S CORRECT. JUST LIKE A PERSON WHO IS REPRESENTED BY A PUBLIC DEFENDER OR A PERSON IS REPRESENTED BY A 987 APPOINTMENT, THE SAME GUIDELINES APPLY TO A PRO PER.

BECAUSE HE IS INDIGENT, HE HAS A RIGHT TO SUBMIT ORDERS TO THE COURT REQUESTING THAT AN INVESTIGATOR BE APPOINTED AND REQUESTING CERTAIN FUNDS. AND THEN THE COURT JUST FOLLOWS THE SAME REGULATIONS.

BUT MR. ROBBINS IS GOING TO HAVE TO FILE THE APPROPRIATE ORDERS WITH THE COURT REQUESTING THOSE THINGS. ONCE THOSE PROCEDURAL RULES ARE COMPLIED WITH, THEN THE COURT COULD DO THAT.

THE COURT: IF YOU WILL FILE WITH ME THE REQUEST FOR THE APPOINTMENT OF A PRIVATE INVESTIGATOR FOLLOWING THE SAME RULES THAT I WOULD APPLY TO ANYONE ELSE MAKING SUCH A REQUEST, TENTATIVELY I WOULD AUTHORIZE UP TO $5,000.

MS. GRAVES: I THINK WHAT JUST HAPPENED HERE IN THE COURT POINTS OUT

ONE OF THE PROBLEMS WITH BEING PRO PER. AND THAT IS THAT YOU HAD THIS IDEA THAT YOU COULD DO SOMETHING AND NO CLUE AS TO THE PROCEDURES AND POLICIES OF HOW TO DO IT.

WE ARE UNDER NO OBLIGATION TO TELL YOU HOW TO DO THESE THINGS AND YOU ARE GOING TO HAVE TO FIGURE OUT HOW TO THOSE THINGS ON YOUR OWN BECAUSE WE DON'T REPRESENT YOU AND THE JUDGE DOESN'T REPRESENT YOU.

THAT IS JUST ONE EXAMPLE OF THE PROBLEMS YOU ARE GOING TO BE RUNNING INTO ON THE WAY.

THE DEFENDANT: I REALIZE THE MESS I AM IN, YES.

MS. GRAVES: DO YOU STILL WANT TO REPRESENT YOURSELF?

THE DEFENDANT: YES, MA'AM.

MS. GRAVES: THANK YOU.

THE COURT: ALL RIGHT, MR. ROBBINS.

IS THERE ANYTHING ELSE?

THE DEFENDANT: THAT'S IT FOR TODAY, SIR,

THE COURT: I WILL REMAND YOU TO CUSTODY AND SEE YOU ON APRIL 9TH.

THE DEFENDANT: THANK YOU, YOUR HONOR.

(AT 2:24 P.M., THE PROCEEDINGS WERE CONTINUED TO MONDAY, APRIL 9, 1990, AT 9:00 A.M.)

NORWALK, CALIFORNIA;

MONDAY, APRIL 16, 1990* 11:10 A.M.

DEPARTMENT SOUTHEAST F HON. ROBERT W. ARMSTRONG, JUDGE

APPEARANCES:

THE DEFENDANT PRESENT IN PROPRIA PERSONA; KURT SEIFERT (sic), DEPUTY DISTRICT ATTORNEY OF LOS ANGELES COUNTY, REPRESENTING THE PEOPLE OF THE STATE OF CALIFORNIA.

(KAREN M. ANDERSON, OFFICIAL REPORTER.)

THE COURT: MR. ROBBINS, YOUR MATTER IS HERE FOLLOWING GRANTING OF YOUR AFFIDAVIT FILED IN JUDGE SIMPSON'S COURT. THIS COURT IS SIMPLY THE SUPERVISING COURT OF CRIMINAL MATTERS.

I HAVE BEEN TOLD YOU WANT TO CONTINUE THIS MATTER FOR 30 DAYS.

IS THAT RIGHT?

THE DEFENDANT: YES, SIR, PLEASE.

THE COURT: ALL RIGHT.

SO 30 DAYS FROM TODAY WOULD BE THE 16TH OF MAY.

SO WE WILL CONTINUE THE MATTER TO THE 16TH OF MAY IN DEPARTMENT P OF THIS COURT, IN JUDGE KALUSTIAN'S COURT, ON THE 6TH FLOOR. RICHARD KALUSTIAN.

THE DEFENDANT: YES, SIR.

THE COURT: THE MATTER WILL BE TRANSFERRED TO DEPARTMENT P.

ON THAT DAY, 30 DAYS FROM NOW, THE MATTER WILL BE ZERO OF TEN ON THAT DAY.

MR. SEIFER: THAT WOULD BE BEYOND THE 60 DAYS, SO IT WOULD BE AUTOMATICALLY ZERO OF TEN.

THE COURT: YOU UNDERSTAND YOU HAVE A RIGHT TO HAVE YOUR TRIAL WITHIN 60 DAYS OF THE DATE OF YOUR INITIAL ARRAIGNMENT. YOU ARE ASKING FOR THIS CONTINUANCE, AND I AM WILLING TO GRANT IT. BUT THE PEOPLE WOULD HAVE POSSIBLY -- THEY DON'T HAVE TO TAKE IT, BUT THEY WOULD HAVE THE POSSIBILITY OF DELAYING THE MATTER -- START OF THE TRIAL FOR AN ADDITIONAL TEN DAYS AFTER THE 16TH OF MAY.

DO YOU UNDERSTAND THAT?

THE DEFENDANT: YES, SIR.

THE COURT: THAT'S AGREEABLE WITH YOU?

THE DEFENDANT: YES, SIR.

THE COURT: TIME WAIVER NOTED, GOOD CAUSE APPEARING, THE MATTER WILL BE SET FOR TRIAL IN DEPARTMENT P ON THE 16TH OF MAY.

THE MATTER WILL BE ZERO OF TEN ON THAT DAY.

MR. SEIFERT: YOUR HONOR, IS THERE A PREVIOUS TRIAL DATE?

I WAS INFORMED TODAY WAS A PRETRIAL DATE, BUT I AM NOT SURE IF A TRIAL DATE HAD BEEN SET.

THE CLERK: I BELIEVE THERE WAS A DIFFERENT TRIAL DATE.

THE COURT: THE TRIAL DATE WAS SET FOR THE 20TH. SO THE TRIAL DATE OF THE 20TH IS VACATED.

MR. SEIFERT: OF THIS MONTH?

THE COURT: OF APRIL IS VACATED.

THE MATTER WILL BE RESET FOR TRIAL, ZERO OF TEN, ON THE 16TH OF MAY.

THE DEFENDANT: I HAVE A MOTION REQUESTING ADVISORY COUNSEL. WOULD I BE ABLE TO MAKE THAT MOTION WITH YOU, YOUR

HONOR, OR WOULD I HAVE TO WAIT UNTIL I WENT TO DEPARTMENT P?

THE COURT: YOU SHOULD -- LET'S SEE.

THE DEFENDANT: I JUST RECEIVED SOME - -

THE COURT: I HAVEN'T SEEN THIS FILE.

ARE THERE SPECIAL CIRCUMSTANCES ALLEGED IN THIS CASE?

THE DEFENDANT: NO, SIR.

MR. SEIFERT: I BELIEVE NOT.

THE COURT: GENERALLY, IF YOU ARE IN PRO PER, YOU DON'T HAVE A RIGHT TO HAVE ADVISORY COUNSEL, UNLESS IT IS A MATTER OF WHERE THERE ARE SPECIAL CIRCUMSTANCES.

MR. SEIFERT: THERE AREN'T ANY.

THE COURT: SO I WILL SIMPLY DENY IT AT THIS TIME WITHOUT PREJUDICE; BUT YOU WANT TO RAISE THE MATTER AGAIN WITH

JUDGE KALUSTIAN, YOU CAN FILE A MOTION FOR ADVISORY COUNSEL AND SET IT FOR HEARING. BUT DON'T WAIT UNTIL THE TRIAL DATE TO DO THAT.

THE DEFENDANT: OKAY.

CAN WE SET A PRETRIAL DATE AND NOT A TRIAL DATE?

THE COURT: RIGHT.

LET'S SET A TWO-WEEK DAY FOR PRETRIAL.

WE WILL SET THAT FOR THE 2ND OF MAY, AND AT THAT TIME PREPARE YOUR MOTION.

SO I AM NOT REALLY RULING ON IT TODAY. MAKE YOUR MOTION THEN AND SEND A COPY TO THE PEOPLE AND LET THEM KNOW THAT YOU ARE GOING TO ASK FOR ADVISORY COUNSEL.

THE DEFENDANT: YES, YOUR HONOR. ON THE 2ND OF MAY.

THANK YOU, YOUR HONOR.

(PROCEEDINGS CONCLUDED.)

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LOS ANGELES, CALIFORNIA;

WEDNESDAY, MAY 2, 1990* 9:30 A.M.

DEPARTMENT NO. SE P HON. RICHARD P. KALUSTIAN, JUDGE

APPEARANCES:

THE DEFENDANT PRESENT IN COURT IN PROPRIA PERSONA; JAMES FAGAN, DEPUTY DISTRICT ATTORNEY OF LOS ANGELES COUNTY, REPRESENTING THE PEOPLE OF THE STATE OF CALIFORNIA.

(GLORIA J. HALL, OFFICIAL REPORTER.)

MR. FAGAN; THE TRIAL DATE IS MAY 16TH ON ROBBINS. I'D ASK TO HAVE THE DEFENDANT ORDERED OUT BECAUSE I HAVE ANOTHER CASE PENDING IN DEPARTMENT E TODAY.

THE COURT: PEOPLE VERSUS ROBBINS. TRIAL DATE IS 16 MAY. THIS IS THE PRETRIAL DATE.

MR. ROBBINS, WILL YOU BE READY FOR TRIAL ON THE 16TH OF MAY?

THE DEFENDANT: NO, YOUR HONOR, I WON'T BE. I HAVE A REQUEST FOR A, AUTHORIZING A LEGAL RUNNER. JUDGE SIMPSON HAD AUTHORIZED AN INVESTIGATOR ON MARCH 9TH. I CONTACTED AN INVESTIGATOR AND HE SUBSEQUENTLY TOLD ME THAT THERE WAS NO AUTHORIZATION TO PAY HIM. SO I NEED TO GET AUTHORIZATION FOR AN INVESTIGATOR.

THE COURT: NO. YOU NEED TO PREPARE THE AUTHORIZATION FOR ME TO SIGN.

THE DEFENDANT: YES, SIR.

THE COURT: YOU ARE DEFENDING YOURSELF. SO YOU MAY HAVE EITHER EATEN UP A MONTH OF YOUR TIME NOT KNOWING WHAT TO DO. SO I WOULD SUGGEST THAT YOU FIGURE OUT WHAT TO DO.

IN ORDER FOR ME TO AUTHORIZE AN INVESTIGATOR, YOU HAVE TO PREPARE A COURT ORDER WHICH TELLS ME HOW MUCH YOU NEED TO SPEND AND WHY SO I CAN SIGN THE COURT ORDER.

THE DEFENDANT: WELL, I NEED AN INVESTIGATOR, SO I NEED A MINIMUM OF $500.

THE COURT: DON'T JUST TELL ME. PREPARE THE ORDER SO I CAN SIGN IT.

THE DEFENDANT: YES, SIR.

ON MARCH 16TH, JUDGE ARMSTRONG DENIED A REQUEST FOR ADVISORY COUNSEL. I HAVE A PETITION FOR WRIT OF MANDATE PROHIBITION FOR THE COURT HERE, YOUR HONOR, AND A COPY.

THE COURT: MR. ROBBINS, IN THE FUTURE ALL MOTIONS SHOULD BE SENT IN WELL IN ADVANCE OF THE DATE. DON'T BRING THEM TO COURT ON THE DATE YOU ARRIVE. I CAN'T

READ THEM AND I CANNOT RULE ON THEM. I CAN'T DECIDE ON THEM.

THE DEFENDANT: YES, SIR.

THE COURT: SEND THEM IN.

THE DEFENDANT: I MAILED ONE LAST TIME TO JUDGE SIMPSON AND HE SAID HE DID NOT GET IT THROUGH THE MAIL. AND SO I FIGURED IT WOULD BE APPROPRIATE TO BRING IT TO COURT.

THE COURT: YOU CAN SEE THAT I CANNOT READ THE MOTIONS IF YOU BRING THEM IN NOW.

THE DEFENDANT: YES, SIR.

THE COURT: YOU HAVE GOT 6 OR 8 OR 10 PAGES. I HAVE GOT TO READ IT NOW. SEND THE MOTIONS IN EARLY. IF THEY DON'T COME, YOU CAN BRING A COPY WHEN YOU COME IN. OR CALL THE CLERK AND VERIFY THAT THE CLERK HAS RECEIVED A MOTION. THESE ARE

ALL YOUR RESPONSIBILITY, MR. ROBBINS. GOING PRO PER IS A GIANT PAIN FOR YOURSELF.

THE DEFENDANT: THAT'S WHY I HAVE BEEN ASKING FOR ADVISORY COUNSEL.

THE COURT: THE PROBLEM IS YOU EITHER GET TO GO PRO PER OR YOU HAVE A LAWYER. ADVISORY COUNSEL, COURTS AREN'T GENERALLY INCLINED TO GIVE A GUY PRO PER STATUS AND ADVISORY COUNSEL. YOU CAN SEE WHERE THE COURTS ARE REALLY NOT VERY INTERESTED IN GIVING YOU YOUR OWN PRO PER PLUS A PAID FOR LAWYER.

THE DEFENDANT: YES, SIR.

THE COURT: SO YOU MAY WELL BE STUCK THROUGH THIS TRIAL DEVELOPING YOURSELF. YOU HAVE SEEN THE COUNTY JAIL LAW LIBRARY, HAVEN'T YOU?

THE DEFENDANT: YES, SIR.

THE COURT: IT'S A REAL DELIGHT, ISN'T IT? ALL THE CASES YOU WANT ARE ALL TORN OUT, AREN'T THEY?

THE DEFENDANT: DEFINITELY, YOUR HONOR.

THE COURT: SO AS YOU ARE WENDING YOU WAY THROUGH, IF YOU ARE LOOKING UP LAW, YOU ARE NOT GOING TO ABLE TO FIND IT BECAUSE SOMEBODY HAS TORN IT OUT BEFORE YOU GOT THERE. AND YOU ARE GOING TO BE ASKING ME FOR TIME OR BOOKS OR SOMETHING ELSE, AND I AM NOT GOING TO BE INCLINED TO GRANT IT. SO AS A PRO PER, YOU ARE GOING TO HAVE TO GO THROUGH THIS FIELD OF LAND MINES.

THE DEFENDANT: IT'S BEEN A MESS SO FAR, YOUR HONOR.

THE COURT: IT'S GOING TO BE WORSE. I TELL YOU THIS BECAUSE I DON'T CARE

WHETHER YOU ARE PRO PER. THAT'S FINE, TOO. BUT IT'S GOING TO BE A REAL MESS FOR YOU. YOU ARE GOING TO REGRET THIS FOR A LONG TIME, NOT BECAUSE OF ANYTHING I AM GOING TO DO, JUST YOUR FELLOW PRISONERS DOWN IN THE COUNTY JAIL WHO HAVE VIRTUALLY DESTROYED THE LAW LIBRARY.

IF THEY HAD THE SAME INTEREST IN KEEPING THE LAW LIBRARY AS THE PEOPLE USING THE LIBRARY IN THIS COURTHOUSE, IT WOULD BE DIFFERENT. YOU'D BE ABLE TO FIND WHAT YOU WANT, GET TO IT, BUT THAT'S THE WAY IT IS.

I WILL TAKE A LOOK AT THIS. YOU ARE GOING TO NEED A CONTINUANCE OF YOUR TRIAL DATE.

MR. FAGAN, ANY OBJECTION TO THAT?

MR. FAGAN: YOUR HONOR, I AM NOT GOING TO OBJECT TO ONE MORE

CONTINUANCE, BUT THIS CASE HAS HAD A RATHER MIXED HISTORY.

THE ARRAIGNMENT WAS DECEMBER 19TH OF 1989. HOWEVER, THERE WAS ONE LONG DELAY IN THE CASE WHEN JUDGE TORRIBIO ON HIS OWN DECIDED THE DEFENDANT WAS 1368 WHICH IT TURNED OUT HE WASN'T. I BELIEVE THE COURT INDICATED HE'S BEEN PRO PER SINCE MARCH 9TH.

I DON'T THINK IT WOULD BE APPROPRIATE FOR ME TO OBJECT TO ONE MORE, ABOUT A 30 DAY CONTINUANCE, BUT I THINK AFTER THAT --

THE COURT: LET ME GIVE YOU MY POLICY, MR. FAGAN AND MR. ROBBINS, ON PRO PERS SO THAT EACH OF YOU UNDERSTAND THAT. I WILL GENERALLY GIVE A PRO PER TWO CONTINUANCES.

YOU CAN HAVE THIS ONE AND YOU CAN PROBABLY HAVE THE NEXT ONE FOR AT LEAST ABOUT 30 DAYS. BUT AT THE END OF THAT TIME, I HAVE GOT TO HEAR SOME VERY GOOD REASON TO CONTINUE THE CASE AGAIN OR YOU WILL BE SITTING HERE TRYING THE CASE.

THE DEFENDANT: YES, YOUR HONOR.

THE COURT: I WANT YOU TO REALLY HEAR ME, MR. ROBBINS, BECAUSE WHAT'S GOING TO HAPPEN IS AS YOU GO IN THE COUNTY JAIL LAW LIBRARY AND TRY TO GET YOUR STUFF TOGETHER AS A PRO PER IN JAIL, IT'S GOING TO BE EXCEEDINGLY DIFFICULT. YOU ARE GOING TO BE FRUSTRATED, MAD, UPSET.

AND EACH TIME YOU COME TO COURT, YOU WILL HAVE NOT DONE OR BEEN ABLE TO DO WHAT YOU WANT TO DO. AND YOU ARE GOING TO EXPECT ME TO CONTINUE THE CASE BECAUSE IT'S ALMOST IMPOSSIBLE AS A PRO

PER TO PREPARE YOURSELF A DESCENT DEFENSE, ESPECIALLY GIVEN THE LAW LIBRARY.

THE DEFENDANT: YES, YOUR HONOR.

THE COURT: SUPREME COURT COMMANDS THAT I LET YOU GO PRO PER IF YOU ARE REASONABLY WELL WIRED TOGETHER, AND YOU ARE. PERSONALLY, I WOULDN'T ALLOW IT, GIVEN THE COMPLEXITY OF THE LAW. THE SUPREME COURT COMMANDS ME TO DO THAT. BUT IT DOESN'T COMMAND ME TO CONTINUE THE CASE UNTIL YOU FIGURE YOU ARE READY. AND THAT'S THE BIGGEST PROBLEM AND THE DISPARITY OR THE DIFFERENCE BETWEEN WHAT YOU THINK OUGHT TO HAPPEN AND WHAT I THINK OUGHT TO HAPPEN.

I WILL GIVE YOU YOUR CONTINUANCE. AND IF NECESSARY, I WILL PROBABLY GIVE YOU ANOTHER CONTINUANCE. BUT AT THAT

POINT, WE ARE PROBABLY GOING TO STOP ABRUPTLY, AND WE ARE GOING TO BE IN TRIAL.

THE DEFENDANT: YES, YOUR HONOR. I HAVE A COPY OF THAT REQUEST FOR ADVISORY COUNSEL. WOULD THE COURT LIKE ONE FOR ITS FILE?

THE COURT: I AM SURE WE HAVE ONE IN THE FILE, DO WE NOT?

THE DEFENDANT: I DON'T KNOW, YOUR HONOR.

THE COURT: IN THE UNLIKELY EVENT THAT WE DON'T --

THE DEFENDANT: WHATEVER IS CONVENIENT TO THE COURT.

THE COURT: NO, WHATEVER IS CONVENIENT TO YOU. WANT TO MAKE IT AS EASY ON YOU AS THIS WHOLE PROCESS IS, SO YOU TELL ME WHAT DATE.

THE DEFENDANT: COULD WE SET A PRETRIAL DATE FOR 30 DAYS FROM THIS TIME, YOUR HONOR?

THE COURT: ALL RIGHT. AND I WILL SET A TRIAL DATE FOR ABOUT 30 DAYS PAST THAT.

MR. FAGAN: THAT'S FINE, YOUR HONOR.

THE COURT: THAT WILL BE BASICALLY TWO CONTINUANCES.

THE DEFENDANT: YES, YOUR HONOR.

THE COURT: YOU INDICATE WHICH DATE IT IS. THIRTY DAYS FROM NOW IS ABOUT JUNE 6TH FOR PRETRIAL.

THE DEFENDANT: FINE, YOUR HONOR.

THE COURT: PRETRIAL CONFERENCE IS SET FOR 6-6. LET'S MAKE IT JULY 6.

THE DEFENDANT: YES, YOUR HONOR.

THE COURT: AND THAT'S ZERO OF TEN.

THE DEFENDANT: YOUR HONOR, HOW WOULD YOU RECOMMEND I GET AN

INVESTIGATOR ON THE CASE? SHOULD I WAIT UNTIL I COME BACK?

THE COURT: ABSOLUTELY NOT BECAUSE YOU WILL BE WASTING ALL THAT TIME BETWEEN NOW AND JUNE 6TH. PREPARE A COURT ORDER FOR ME TO SIGN. I WILL GIVE YOU A COPY OF THE MINUTE ORDER IF THAT'S SUFFICIENT FOR HIM. BUT THE PROBLEM IS I AM NOT GOING TO SUGGEST HOW YOU DO ANYTHING. YOU ELECTED TO GO PRO PER AND THIS IS A VERY COMPLEX BUSINESS.

THE DEFENDANT: COULD I GET A MINUTE ORDER FOR THAT TODAY THEN?

THE COURT: YOU WILL GET A COPY OF THE MINUTE ORDER APPOINTING THE INVESTIGATOR. WHAT WAS HIS NAME?

THE DEFENDANT: MR. ZINK.

THE COURT: I WILL AUTHORIZE MR. ZINK $500. THAT'S IN THE MINUTE ORDER. IF HE

DOESN'T ACCEPT THAT, THEN YOU ARE GOING TO HAVE TO PREPARE A COURT ORDER AUTHORIZING THE EXPENDITURE, AUTHORIZING NO MORE THAN $500.

THE COURT: ALL THIS TAKES TIME.

THE DEFENDANT: YES, YOUR HONOR.

MR. FAGAN: YOUR HONOR, FOR THE RECORD, MAY I TAKE A TIME WAIVER, EVEN THOUGH THE DEFENDANT IS IN PRO PER?

THE COURT: CERTAINLY.

MR. FAGAN: MR. ROBBINS, YOU KNOW YOU HAVE GOT A RIGHT TO BE BROUGHT TO TRIAL WITHIN TEN DAYS OF MAY 16TH. YOU HAVE NOW ASKED FOR JULY 6TH. DO YOU GIVE UP YOUR RIGHT TO A NEW TRIAL?

THE DEFENDANT: YES, SIR.

MR. FAGAN: THANK YOU, YOUR HONOR.

THE COURT: I WILL BRING YOU OUT A LITTLE BIT LATER THIS MORNING WHEN I DECIDE ON THE WRIT OF MANDATE, OKAY?

THE DEFENDANT: OKAY.

MR. FAGAN: MR. MERRICK WILL STAND IN FOR ME, YOUR HONOR.

(SHORT RECESS.)

(MARC MERRICK, DEPUTY DISTRICT ATTORNEY OF LOS ANGELES COUNTY, STANDING IN FOR JAMES FAGAN.)

THE COURT: THIS IS PEOPLE VERSUS ROBBINS.

I HAVE READ YOUR PETITION FOR WRIT OF MANDATE AND ALSO YOUR ORIGINAL REQUEST FOR ADVISORY COUNSEL. PETITION FOR WRIT OF MANDATE IS DENIED. MR. ROBBINS, BY YOUR ANALYSIS, EVERY DEFENDANT WHO WENT PRO PER WOULD BE

AUTOMATICALLY ENTITLED TO ADVISORY COUNSEL.

THE DEFENDANT: I CAN'T HEAR, YOUR HONOR.

THE COURT: BY YOUR ANALYSIS, IF YOUR ANALYSIS WERE ACCEPTED BY THE COURT, EVERY PERSON ALLOWED TO GO PRO PER WOULD BE ENTITLED TO ADVISORY COUNSEL BECAUSE OF THE FACTORS YOU POINT OUT, RIGHT?

THE DEFENDANT: YES, SIR.

THE COURT: JUST CHATTING AMONG US PEOPLE HERE, WOULDN'T THAT INDUCE EVERY DEFENDANT TO GO PRO PER AND GET A PRE-ADVISORY LAWYER? IF I WERE A PRO PER, I'D SERIOUSLY THINK OF THAT.

I AM DENYING YOUR MOTION BECAUSE I HAVE EXERCISED MY DISCRETION AGAINST ADVISORY COUNSEL. THIS IS EXACTLY THE

PROBLEM YOU FACE WHEN YOU GO PRO PER AND YOU ARE IN THE COUNTY JAIL. THERE IS ALWAYS A DISPUTE BETWEEN YOU AND THE LAW LIBRARY, THE SHERIFF, WHOEVER, ABOUT WHETHER OR NOT THE FACILITIES ARE ADEQUATE FOR YOUR NEEDS. AND IT'S SOMETHING YOU HAVE CHOSEN TO DO.

YOU HAVE A RIGHT TO A FREE LAWYER. YOU HAVE BEEN GIVEN A FREE LAWYER. IF YOU WANT ONE, YOU CAN HAVE ONE. BUT I AM NOT GOING TO GIVE YOU ADVISORY COUNSEL.

YOUR PETITION FOR WRIT OF MANDATE IS DENIED.

(CASE CONTINUED TO JULY 6, 1991, 9:00 A.M.)

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Lee Robbins
441 Bauchet St.
Los Angeles, CA 90012

Filed
July 06, 1990
Frank S. Zolin,
County Clerk
By B. Smith, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,	) CASE #A481636
Plaintiff,	) NOTICE OF MOTION) FOR CONTINUANCE,) DECLARATION IN
v.	) SUPPORT OF MOTION
LEE ROBBINS,	
Defendant.	

TO: THE DISTRICT ATTORNEY OF LOS ANGELES COUNTY, PLEASE TAKE NOTICE that on July 6, 1990 at 9 am in Department "P", Defendant LEE ROBBINS will move the court to grant a continuance of the trial now set for July 6, 1990, and that the continuance be for a period of not less than 45 calendar days.

This motion is based on this notice, the pleadings, files and records in this action, the declaration and memorandum of points and authorities filed in support of this motion, and on evidence that may be addressed at the hearing on the matter.

Dated: June 28, 1990

Lee Robbins
Defendant Pro Per

MOTION FOR CONTINUANCE

I, LEE ROBBINS, DO HEREBY DECLARE:
THAT this case is presently set for July 6, 1990 in Dept. "P" of Norwalk Superior Court:
THAT a continuance of the trial for at least 45 calendar days is necessary because;

DUE TO THE COMPLEXITY OF THIS CAPITAL CASE, defendants lack of skill, resources, co-counsel, or advisory counsel, the defendant will require the additional requested time to adequately prepare.

PEO-V-HILL (1983) 48 CA 3d 744, 758, 196 CR 382, 391. PRO PER DEFENDANT MOTION FOR CONTINUANCE to prepare for trial denied, case reversed because defendant denied his right to effective representation.

THE RIGHT TO COUNSEL, U.S. CONST. ART. VI: CAL. CONST. ART. 1 & 15 includes the right to adequately prepare a defense.

PEO V. MADDOX (1967) 67 C2d 647, 652, 63 CR 371, 374. Including the right to prepare, above motions and objections before, during, and after trial. Cooper v. Sup. Ct. (1961) 55 C2d 291, 302, 10 CR 842, 849
PEO V. SARAZZAWSKI (1945) 27 C2d 717, 161 P2d 934, 939.

THE COURT HAS DISCRETION TO PERMIT AN INDIGENT defendant an attorney advisor and may have a duty to appoint advisory counsel if it determines that defendants waiver is intelligently made but that defendant lacks the skill to defend the case.
PEO-V-BIGLOW (1984) 37C3D 731, 742, 209 CR 328, 333. (Abuse of discretion by court to appoint advisory

counsel in capital case.) A.C. 987.9 sub(d). DRESCHER-V-SUP. CT. (1990) 267 CR 661.

THE DEFENDANT PRAYS THAT THE COURT IN ITS infinite wisdom will allow the defendant the opportunity to prepare an adequate defense by granting more time, the assistance of advisory counsel, funds for a forensic expert, and additional funds for the continuing investigation.

Defendant investigator needs additional time and funds to complete his investigation.

The investigators findings are expected to show additional evidence crucial to the defense when coupled with the experts findings in reconstructing the murder.

The experts findings are expected to disprove the prosecutors case and expedite the trial by removing all doubt as to the defendants innocence.

Counsel must specify the testimony he expects from a witness. PEO-V-AH FAT (1874) 48 C 61, 63. Then Counsel must show that this testimony has a legitimate tendency to prove or disapprove a fact that could influence the decision in the case. PEO-V-DUNSTAN (1922) 59 CA 574, 584, 211 P 813, 817.

If the court wishes more detailed information relative to these requests the defendants requests an in camera hearing.
PEO-V-CRUZ (1978) 83 CA3d 308, 324, 147 CR 740, 749.
PEO-V-WORTHY (1980) 109 CA3d 514, 522 N2, 167 CR 402, 407 N2.

THE DEFENSE REQUESTS:
Additional time to prepare;

Funds for appointment of forensic expert;

Funds for appointment of advisory counsel;

Additional funds for continuing investigation.

The defendant prays these requests be granted, and that the court "shall be guided by the need to provide a complete and full defense for the defendant" Penal Code sec 987.9

The defendant is willing to waive time for the purpose of these requests.

Executed this 28th day of June 1990, at Los Angeles, CA.

I declare under penalty of perjury that the forgoing is true and correct.

Lee Robbins
Defendant Pro Per

[Document not stamped "Filed"]

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

Lee Robbins (Petitioner) vs. L.A. COUNTY JAIL (Respondent)	No. _____ (To be supplied by Clerk of the Court) Petition for Writ of Habeas Corpus Name of person in custody: _____ (If other than petitioner) Relationship of petitioner to person in custody _____ _____

INSTRUCTIONS - READ CAREFULLY

Set forth in concise form the answers to each applicable question. If you do not know the answer to any question, you should so state. If necessary, you may finish the answer to a particular question on an additional blank page, but make it clear to which question any such continued answer refers.

You sho ld exercise care to assure that all answers are true and correct. Since the petition contains a verification, the making of a statement which you know is false may result in a conviction for perjury.

When the petition is filed with the Superior Court or judge thereof, only the original must be filed unless additional copies are required by local court rules.

When the petition is filed with the Court of Appeal or judge thereof, an original and three copies must be filed.

When the petition is filed with the Supreme Court or judge thereof, an original and ten copies must be filed.

In addition, the law requires the service of a copy of the petition on the district attorney, city attorney or city prosecutor in certain cases (Pen. Code, § 1475; Gov. Code, § 72193).

Petitioner should attach all relevant records of documents supporting his claims. [As amended effective Nov. 11, 1966.]

1. LEE ROBBINS in whose behalf the writ is applied

(Name of person in custody)

for is confined or restrained of his liberty at Los Angeles

County Jail

by Los Angeles County Sheriff

(Name of person or persons having custody-if names not known describe such person or persons)

2. Name and location of court under whose process person is confined:

Norwalk Superior Court

12720 Norwalk Blvd.

Norwalk, CA 90650

3. Nature of the court proceeding (e.g., criminal case, commitment for narcotics addiction, insanity, or mentally disordered or abnormal sex offender) and the case number, if known, resulting in the confinement: A481636

_____

4. The date of the judgment, or order or decree for confinement and its

terms: _____

Pre Trial Proceedings _____

5. What plea was entered in the above proceeding? (E.g., guilty, not guilty by reason of insanity, nolo contendere, etc.)

Not Guilty _____

_____

6. Check whether trial or hearing was by

(a) A jury
(b) A judge without a jury

7. Was an appeal taken?

8. If you answered "yes" to (7), list

(a) The name of each court to which an appeal was taken:

i _____

ii _____

iii _____

(b) The result in each such court:

i _____

ii _____

iii _____

(c) The date of each such result and, if known, citations of any written opinion or orders entered:

i _____

ii _____

iii _____

9. If the answer to (7) "no" state the reasons for not so appealing:

_____

_____

10. State concisely the ground on which you base your allegation that the imprisonment or detention is illegal:

(a) I am being denied counsel, and hereby _____

(b) Request that an attorney be appointed _____

(c) To Represent me.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) I was forced to choose between Mr. Seifer who said I

(b) would be convicted if I went to trial and going pro-per, I

(c) have been unable to get any pre-trial motions granted (People v. Cruz 83 Cal.App.3d

12. Have any other applications, petitions or motions been filed or made in regard to the same detention or restraint?

Yes

13. If you answered "yes" to (12), list with respect to each petition, motion or application:

(a) The specific nature thereof:

i Motion for advisory counsel, co-counsel or the alternative counsel.

ii

iii

iv

(b) The name and location of the court in which each was filed:

i Norwalk Superior Court

ii

iii

iv

(c) The deposition thereto.

i Denied

ii

iii

iv

(d) The date of each such disposition:

i May 2, '990

ii

iii

iv

(e) If known, citations of any written opinions or orders entered pursuant to each such disposition:

i _____

ii _____

iii _____

iv _____

14. Has any ground set forth in (10) been previously presented to this or any other court, state or federal, in any petition, or application? No

15. If you answered "yes" to (14), identify:

(a) Which grounds have been previously presented:

i _____

ii _____

iii _____

(b) The proceedings in which ground was raised:

i _____

ii _____

iii _____

16. If any ground set forth in (10) has not previously been presented to any court, state or federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

This court has jurisdiction

(b) _____

_____

(c) _____

_____

17. In the proceeding resulting in the confinement complained of, was there representation by an attorney at any time during the course of:

(a) The proceedings prior to trial? Ralph Seifer, D.D.

(b) The trial or hearing? NA

(c) The sentencing or commitment? _____

(d) An appeal? _____

(e) The preparation, presentation or consideration or any petitions, motions or application with respect to this conviction? NA

18. If you answered "yes" to one or more part of (17), list the name and address of each such attorney and the proceeding in which he appeared:

(a) Ralph Seifer Norwalk Public Defender

Offender Office

12720 Norwalk Blvd

(b) Norwalk, CA 90650

(c) _____

19. Is the person in custody presently represent by an attorney in any matter relating to this confinement?

No

If so, state the attorney's name and address: _____

20. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

NA

I, the undersigned, say:

I am the petitioner in this action; the above document is true of my own knowledge, except as to matters that are stated in it on my information and belief, and as to those matters I believe it to be true.

Executed on 13 July 1990 at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Lee Robbins
(Signature)

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NORWALK, CALIFORNIA;

FRIDAY, JULY 13, 1990*

9:07 A.M.

DEPARTMENT SOUTHEAST F HON. ROBERT W. ARMSTRONG, JUDGE

APPEARANCES:

THE DEFENDANT PRESENT IN PROPRIA PERSONA; JAMES FAGAN, DEPUTY DISTRICT ATTORNEY OF LOS ANGELES COUNTY, REPRESENTING THE PEOPLE OF THE STATE OF CALIFORNIA.

(KAREN M. ANDERSON, OFFICIAL REPORTER.)

THE COURT: THE MATTER OF PEOPLE VERSUS LEE ROBBINS.

THIS MATTER IS HERE FOR TRIAL TODAY SEVEN OF TEN. MONDAY WILL BE THE

TENTH DAY FOR THE MATTER TO PROCEED TO TRIAL.

I HAVE A MOTION FILED FOR CONTINUANCE. HOWEVER, THE MOTION SIMPLY CITES A LOT OF CASES AND REALLY DOES NOT GIVE ANY REASON FOR A CONTINUANCE, OTHER THAN THE FACT THAT YOU ARE PRO PER AND YOU HAVEN'T BEEN TRAINED AS A LAWYER.

BUT, OF COURSE, IF I GAVE YOU A CONTINUANCE, YOU ARE NOT GOING TO GO TO LAW SCHOOL BETWEEN NOW AND THAT TIME, ANYWAY, AND WON'T BE ANY MORE CAPABLE OF REPRESENTING YOURSELF 45 DAYS DOWN THE LINE THAN YOU ARE NOW.

PLUS THE FACT, I THINK IT WAS MADE CLEAR TO YOU BEFORE WHILE THE MATTER WAS IN JUDGE KALUSTIAN'S COURT THAT THE MATTER IS GOING TO PROCEED TO TRIAL. THIS

IS THE OLDEST CASE IN THE BUILDING. WE GENERALLY TRY CASES WITHIN 60 DAYS. SOMETIMES THEY GO 90. THIS CASE IS NOW SEVEN MONTHS OLD, AND IT'S GOING TO PROCEED TO TRIAL.

SO MONDAY YOU SHOULD COME TO COURT PROPERLY DRESSED BECAUSE WE ARE GOING TO START YOUR JURY TRIAL ON MONDAY.

THE MOTION FOR CONTINUANCE IS DENIED.

THE DEFENDANT: I BELIEVE THERE IS A COUPLE OTHER MOTIONS THERE I WOULD LIKE TO HAVE REHEARD; A MOTION FOR ADVISORY COUNSEL AND ALSO A MOTION FOR -- HITCH/TROMBETTA MOTION.

THE COURT; AS FAR AS I KNOW, THOSE MOTIONS HAVE BEEN HEARD.

THE DEFENDANT: YES. I WOULD LIKE TO HAVE THEM REHEARD, YOUR HONOR.

THE COURT: YOU DON'T DO THAT. ONCE A MOTION IS HEARD, THEN YOU DON'T TRANSFER TO ANOTHER COURT AND ASK TO START ALL OVER AGAIN.

THAT'S CALLED RES JUDICATA. IT'S BEEN DECIDED. THEREFORE, YOU DON'T GET A REHEARING ON IT. YOU HAVE MADE YOUR RECORD; AND IF IT WAS ERROR TO DENY THE MOTION, THEN YOU HAVE MADE YOUR RECORD ON APPEAL. AND YOU CAN RAISE IT WITH THE APPELLATE COURT, BUT YOU CAN'T RETRY AND RELITIGATE THE SAME THINGS IN THE TRIAL COURT OVER AND OVER AGAIN.

THE DEFENDANT: ALL RIGHT.

I ALSO HAVE A MOTION TO DISMISS AND WRIT OF HABEAS CORPUS I WOULD LIKE TO FILE WITH THE COURT TODAY, TOO.

THE COURT: IT'S NOT AN APPROPRIATE TIME A FOR WRIT OF HABEAS CORPUS. A WRIT OF HABEAS CORPUS IS TO PRODUCE YOUR BODY IN COURT. SO YOU HAVE HABEAS CORPUSED. SO YOUR BODY IS HERE. IT'S NOT APPROPRIATE AT THIS TIME.

THE HABEAS CORPUS IS DIRECTED TO EITHER IF A PERSON IS HELD IMPROPERLY IN CUSTODY, OR IF HE HAS BEEN IMPROPERLY CONVICTED AND NEW GROUNDS HAVE COME UP THAT WERE NOT RAISED IN THE APPELLATE COURT. THERE ARE ALL KINDS OF BRINGING A HABEAS CORPUS, BUT NOT ON THE DAY OF TRIAL. YOU ARE BEFORE THE COURT.

THE DEFENDANT: I HAVE A MC ION TO DISMISS I WOULD LIKE TO HAVE HEARD.

THE COURT: WELL, AGAIN, IT'S NOT THE APPR PRIATE TIME TO FILE A MOTION TO DISMISS.

ON WHAT GROUNDS IS THE MOTION TO DISMISS?

THE DEFENDANT: INCOMPETENCY OF THE DEFENSE COUNSEL AND MISCONDUCT BY THE PROSECUTOR.

THE COURT: ALL RIGHT.

THIS, AGAIN, IS NOT -- AS FAR AS THE INCOMPETENCY OF DEFENSE COUNSEL, YOU ARE IN PRO PER. ARE YOU TALKING ABOUT YOUR OWN INCOMPETENCY?

THE DEFENDANT: NO. AT THE PRELIMINARY HEARING, YOUR HONOR.

THE COURT: THAT'S A MATTER THAT'S ALSO -- THE PRELIMINARY TRANSCRIPT IS HERE AND IS SOMETHING TO BE PRESERVED AS AN APPELLATE RIGHT, BUT NOT AT THIS TIME. AT THIS TIME THE MATTER IS HERE FOR TRIAL.

AS FAR AS THE MOTION TO DISMISS IS CONCERNED, IT'S PREMATURE. AT THE CLOSE

OF THE PEOPLE'S CASE AND AT ANY TIME AFTER THE PEOPLE HAVE FINISHED PRESENTING THEIR EVIDENCE, YOU CAN MAKE A MOTION UNDER 1118 IF THE EVIDENCE IS INSUFFICIENT TO GO TO THE JURY.

IF I AGREE AND I GRANT -- I GRANT 1118 MOTIONS IN LOTS OF CASES, BUT I HAVEN'T HEARD THIS EVIDENCE SO I DON'T KNOW. BUT IF, IN FACT, THERE IS INSUFFICIENT EVIDENCE FOR THE MATTER TO GO TO A JURY, THEN A MOTION TO DISMISS CAN BE MADE AFTER THE PEOPLE HAVE PUT ON THEIR EVIDENCE. BUT I DON'T KNOW ANYTHING ABOUT THIS CASE EXCEPT THE CHARGE, SO I AM CERTAINLY NOT IN THE POSITION.

THE DEFENDANT: THAT'S WHY I WANT THE MOTION HEARD.

THE COURT: THAT'S WHAT THE TRIAL IS ABOUT. WE WILL PUT ON THE EVIDENCE; AND

AFTER THE WITNESSES HAVE TESTIFIED, THEN EVERYBODY WILL KNOW WHAT THE TRIAL IS ABOUT. THEN IF YOU WANT TO MAKE AN 1118 MOTION, I CAN PROPERLY ADDRESS IT; BUT RIGHT NOW, IN A VACUUM, I DON'T KNOW WHAT THE FACTS ARE IN THE CASE, OTHER THAN WHAT THE CHARGE IS.

THE DEFENDANT: ALL RIGHT.

THE COURT: SO THE MATTER WILL BE HERE FOR TRIAL.

WHAT ABOUT CLOTHES? DO YOU HAVE APPROPRIATE CLOTHING TO WEAR?

THE DEFENDANT: NO, SIR. WHEN I WAS BROUGHT FROM ARKANSAS, I WAS FLOWN OUT IN MY LONG UNDERWEAR AND T-SHIRT.

THE COURT: SO YOU DON'T HAVE ANY CLOTHING AT THE JAIL?

THE DEFENDANT: NO, SIR, I DON'T.

THE COURT: ALL RIGHT.

WE WILL SEE TO IT THERE IS CLOTHING AVAILABLE FOR YOU ON MONDAY.

YOU WOULD PREFER, I TAKE IT, TO APPEAR IN REGULAR CIVILIAN CLOTHES RATHER THAN JAIL BLUES?

THE DEFENDANT: YES, SIR, I WOULD.

WHAT ABOUT SOME SUBPOENAS, YOUR HONOR? WOULD I GIVE THEM TO THE COURT CLERK FOR DELIVERY?

THE COURT: ORDINARILY, YOU WOULD GIVE SUBPOENAS TO THE SHERIFF; BUT IF YOU HAVE SUBPOENAS MADE OUT THAT NEED TO BE SERVED -- YES, IF YOU WILL GIVE THEM TO US, WE WILL SEE THAT THEY RE DELIVERED.

MR. FAGAN: YOUR HONOR, I HAVE ONE ADDITIONAL MATTER.

MR. ROBBINS HAD FILED A MOTION UNDER SECTION 1538.5. I REALLY DON'T THINK THERE IS ANYTHING IN THIS CASE FOR HIM TO

SUPPRESS, BUT HE WAS SUPPOSED TO PROVIDE ME WITH A LIST OF WHAT ITEMS HE WANTED SUPPRESSED SO I COULD HANDLE THAT. HE HAS NOT DONE THAT YET.

I BELIEVE, IF HE WILL PROVIDE ME WITH THE LIST, THE MATTER OF THE 1538 WILL BE MOOT. I DON'T THINK ANYTHING HE WANTS SUPPRESSED WILL BE USED IN THE TRIAL, BUT I DON'T KNOW BECAUSE I DON'T KNOW WHAT IT IS HE IS TRYING TO SUPPRESS.

THE COURT: AS MR. FAGAN SAYS, YOU CAN'T ADDRESS THE MOTION TO SUPPRESS UNLESS WE KNOW WHAT IT IS THAT'S BEING SOUGHT TO BE SUPPRESSED.

THE DEFENDANT: ALL THE ITEMS TO BE SUPPRESSED WERE CONTAINED IN THE RETURN TO WARRANT AND INVENTORY RECORDS, AS I MENTIONED IN THE MOTION TO SUPPRESS.

MR. FAGAN: THEN YOU HAVE NOTHING TO SUPPRESS OTHER THAN WHAT'S INVOLVED IN THE SEARCH WARRANT; IS THAT CORRECT?

THE DEFENDANT: YES.

MR. FAGAN: FINE.

NONE OF THAT STUFF IS IMPORTANT, AND I DON'T THINK WE HAVE TO HEAR THE MOTION.

THE COURT: ALL RIGHT.

IF IT'S NOT GOING TO BE USED, THEN IT'S MOOT.

SO WE WILL BE READY TO PROCEED ON MONDAY. THIS COURT WILL BE OPEN, AND WE WILL BE PREPARED TO TRY THE CASE ON MONDAY.

OKAY.

(A RECESS WAS TAKEN WHILE THE COURT HANDLED OTHER MATTERS.)

THE COURT: IN THE LEE ROBBINS MATTER.

I WILL ASK THE DISTRICT ATTORNEY TO LEAVE THE ROOM.

MR. FAGAN: FINE, YOUR HONOR.

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT OUT OF THE PRESENCE OF THE DEPUTY DISTRICT ATTORNEY:)

THE COURT: IN THE MATTER OF PEOPLE VERSUS ROBBINS.

I ASKED THE PROSECUTOR TO LEAVE THE ROOM.

I HAVE BEEN GIVEN THESE SUBPOENAS.

THE ONE SUBPOENA IS FOR A CIVILIAN WITNESS. WE WILL ATTEMPT TO GET SERVICE ON THAT PERSON.

ONE OF THE DEPUTIES, THE INVESTIGATING OFFICER -- WHAT'S THE NAME OF THAT OFFICER THAT'S RETIRED?

THE BAILIFF: BARRY JONES.

THE COURT: BARRY JONES IS RETIRED FROM THE SHERIFF'S OFFICE. HE NO LONGER IS EMPLOYED BY THE SHERIFF'S OFFICE. WE DON'T KNOW WHERE HE IS. WE HAVE NO ADDRESS FOR HIM.

THE DEFENDANT: OKAY, SIR.

THE COURT: HE IS AN INVESTIGATING OFFICER, BUT HE IS ONLY ONE OF THE INVESTIGATING OFFICERS. BUT SINCE HE NO LONGER WORKS, IT'S NOT THE INTENTION OF THE PEOPLE TO CALL HIM; AND I DON'T KNOW OF ANY WAY THAT I CAN REACH HIM.

THE OTHER OFFICER THAT YOU HAVE ASKED FOR IS THE OFFICER WHO TOOK THE PHOTOGRAPHS OF THE CRIME SCENE, JUST THE PHOTOGRAPHER. THERE IS NO NECESSITY FOR HAVING THE PHOTOGRAPHER IN COURT, THAT I CAN SEE, BECAUSE OTHER OFFICERS THAT

WERE CAN SAY THESE WERE ACCURATE REPRESENTATIONS.

AND THE PHOTOGRAPHER JUST DOES WHAT OTHER OFFICERS DIRECT HIM TO TAKE. THEY SHOOT THIS, SHOOT THAT.

THE DEFENDANT: YES, SIR.

THE COURT: THEY TELL HIM TO TAKE THE PICTURES, AND HE PUSHES THE BUTTON AND SNAPS THE PHOTOGRAPH.

THE DEFENDANT: I REALIZE THAT, BUT HE IS ALSO THE ONE WHO HANDLED THE FINGERPRINTS AT THE SCENE OF THE CRIME.

THE COURT: THE SAME OFFICER THAT DID -- NO. THE PRINT MAN IS SEPARATE. THE PRINT MAN IS COMING IN.

THE DEFENDANT: IF THE PRINT MAN IS COMING IN, THAT'S FINE. IT WAS MY UNDERSTANDING, FROM READING THE INCIDENT LOG AT THE SCENE, THAT DEPUTY

ROTTLER WAS ALSO THE ONE WHO HANDLED THE PRINTS.

THE COURT: I WAS INQUIRING OF THE PROSECUTOR AS TO THE OFFICERS -- THERE IS DUPLICATION. SOME OF THE OFFICERS YOU ARE ASKING FOR THE PEOPLE ARE BRINGING IN, ANYWAY. THE PRINT MAN IS ONE OF THE PEOPLE THAT THE PROSECUTOR IS DEFINITELY BRINGING IN. THE ONE WHO HANDLED THE LATENTS AND PRINTS IS GOING TO BE HERE. SO YOU GOT THAT COVERED.

THE DEFENDANT: YES, SIR.

THE COURT: ALL RIGHT.

NOW, THE CIVILIAN WITNESS --

THE DEFENDANT: DONNA MEDINA.

THE COURT: WE ARE GOING TO MAKE AN EFFORT TO SERVE HER. IT'S HARD TO DO IT ON LAST-MINUTE NOTICE, BUT WE AT LEAST CAN EXTEND -- THERE IS NO -- THE PEOPLE DON'T

PLAN TO CALL HER; AND SO, THEREFORE, WE DON'T HAVE TO HAVE HER HERE ON MONDAY. WE COULD SUBPOENA HER IN FOR WEDNESDAY, AND THAT WOULD BE TIME ENOUGH FOR YOU TO CALL HER AS A DEFENSE WITNESS.

APPARENTLY, THE LADY THAT YOU ASKED TO HAVE SUBPOENAED IS ON THE PEOPLE'S LIST, AS WELL.

THE DEFENDANT: FINE.

THE BAILIFF: I WILL DOUBLE-CHECK THAT WITH MR. FAGAN TO MAKE SURE.

THE COURT: FINE.

THE BAILIFF: IF SHE IS NOT, WE WANT HER HERE ON WEDNESDAY, THE 18TH?

THE COURT: RIGHT.

BUT, APPARENTLY, THEY WILL HAVE ALL OF THE WITNESSES HERE, ACCORDING TO THE CLERK.

ALL RIGHT. WE WILL DOUBLE-CHECK AGAIN.

(PROCEEDINGS CONCLUDED.)

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NORWALK, CALIFORNIA;

THURSDAY, AUGUST 9, 1990*

9:28 A.M.

DEPARTMENT SOUTHEAST H HON. ROBERT W. ARMSTRONG, JUDGE

(APPEARANCES AS HERETOFORE NOTED.)

THE COURT: MR. ROBBINS, THIS MATTER IS HERE FOR HEARING ON YOUR MOTION.

I HAVE READ YOUR MOTION UNDER 995 OF THE PENAL CODE. I CAN TELL YOU THE FAULT OF THE MOTION IS THIS:

I REALIZE YOU ARE NOT AN ATTORNEY, SO YOU'RE NOT ACQUAINTED WITH WHAT THE PROCEDURE IS. BUT A 995 MOTION REQUIRES ME TO REVIEW THE MAGISTRATE'S WORK AND TO SEE IF HE MADE A MISTAKE IN HOLDING YOU TO ANSWER. THE ONLY THING THAT I CAN DO TO RULE ON THIS IS TO LOOK AT THE

FOUR CORNERS OF THE TRANSCRIPT. SO I READ THE TRANSCRIPT IN ITS ENTIRETY.

IN THE TRANSCRIPT THERE ARE -- THERE IS EVIDENCE WHICH YOU BRING UP HERE. NOW, TO GIVE YOU AN EXAMPLE, YOU SAY THAT THE OFFICER PERJURED HIMSELF BY TESTIFYING THAT HE WAS PRESENT AT THE AUTOPSY; AND THE AUTOPSY SURGEON'S REPORT, WHICH HAS BEEN FURNISHED TO YOU, SAYS THAT NO ONE ELSE WAS PRESENT, SO THAT'S NOT SO.

I HAVEN'T SEEN THE AUTOPSY REPORT. IT'S NOT BEFORE ME. AND EVEN IF IT WERE BEFORE ME, I CAN'T CONSIDER IT ON A MOTION FOR 995. I CAN ONLY SEE WHAT THE MAGISTRATE SAW. THE MAGISTRATE DIDN'T HAVE THE AUTOPSY REPORT. IT WASN'T BEFORE HIM.

I AM GIVING YOU THAT AS AN EXAMPLE.

AND THE MAGISTRATE DIDN'T HAVE A COPY OF THE POLICE REPORT, AND NEITHER DO I. I AM NOT ALLOWED TO LOOK AT A COPY OF THE POLICE REPORT. IN THIS WHOLE FILE THERE IS NO POLICE REPORT AND NEVER WILL BE, BECAUSE IT'S NOT FOR ME. IT'S FOR THE PROSECUTOR AND DEFENSE TO HAVE SO THEY CAN USE IT FOR WHATEVER PURPOSE THEY FIND NECESSARY IN THE COURSE OF THE TRIAL.

BUT THE FACT A WITNESS MAY HAVE SAID SOMETHING TO A POLICEMAN AT THE TIME OF THE INVESTIGATION AND SAID SOMETHING CONTRARY TO THAT AT TRIAL, IN THE FIRST PLACE, IT DOESN'T PROVE THAT THE WITNESS IS LYING. IT CERTAINLY DOESN'T

PROVE THERE HAS BEEN SUBORDINATION OF PERJURY.

SO AS FAR AS THE 995 MOTION IS CONCERNED, I HAVE TO LOOK AT JUST EXACTLY WHAT HAPPENED BEFORE THE MAGISTRATE. THAT'S WHAT I HAVE DONE.

IS THERE ANYTHING -- ANY COMMENT THAT YOU WANT TO MAKE OR ANYTHING -- AND I ALSO READ EVERY WORD OF YOUR MOTION UNDER 995. SO I HAVE READ THAT, AND I HAVE READ THE TRANSCRIPT.

IS THERE ANYTHING YOU WANT TO ADD TO WHAT YOU FILED?

THE DEFENDANT: JUST IN REGARDS TO MR. FAGAN PUTTING THE WITNESSES ON AND HAVING THEM TESTIFYING TO THINGS THAT THEY HAD STATED PREVIOUSLY WERE DIFFERENT. ISN'T IT THE COURT'S DUTY TO DISREGARD THE INCOMPETENT EVIDENCE

ENTERED AT THE PRELIMINARY AND BASE THEIR RULING ON THE EVIDENCE THAT REMAINS?

THE COURT: IF THERE WERE -- IF THE MAGISTRATE STRUCK EVIDENCE OR SUSTAINED OBJECTIONS AND RULED EVIDENCE TO BE INCOMPETENT, AND THEN BASED ITS RULING ON THE EVIDENCE THAT WAS STRICKEN, THAT WOULD BE AN ERROR THAT I COULD REVIEW; BUT THAT DIDN'T HAPPEN.

AS FAR AS I AM CONCERNED, I HAVE TO PUT MYSELF IN THE SHOES OF THE MAGISTRATE WHO HEARD THIS AND SAY, IF I WERE THE MAGISTRATE AND I HEARD EXACTLY THE SAME TESTIMONY, WHAT WOULD -- AND THEN THE PEOPLE RESTED THEIR CASE AND NOW IT CAME TIME FOR ME TO SAY, IS THERE REASON TO BELIEVE THAT A CRIME HAS BEEN COMMITTED, IS THERE REASON TO

BELIEVE THAT SOMEBODY WAS KILLED OTHER THAN BY SUICIDE OR AN ACCIDENTAL DEATH, THAT'S THE FIRST QUESTION.

WELL, THERE IS NO QUESTION THIS PERSON WAS KILLED BY MULTIPLE GUNSHOTS THAT WERE NOT SELF-INFLICTED. SO THERE IS REASON TO BELIEVE THAT HE WAS INTENTIONALLY KILLED BY HOMICIDE.

NOW, IS THERE REASON TO BELIEVE, ANY REASON TO BELIEVE THAT YOU MIGHT JUST POSSIBLY BE GUILTY? THAT'S THE MAGISTRATE'S TEST. IT'S NOT GUILTY BEYOND A REASONABLE DOUBT. THAT'S FOR THE JURY TO DETERMINE. BUT JUST IS THERE A REASONABLE SUSPICION THAT THE MAN THAT'S BEFORE ME MAY BE GUILTY?

BECAUSE, REMEMBER, THIS MAGISTRATE IS A MUNICIPAL COURT COMMISSIONER. HE DOESN'T TRY FELONIES.

THIS A SCREENING PROCESS. HE IS NOT EVEN -- ALTHOUGH HE IS SITTING AS A JUDICIAL OFFICER, HIS JOB IS DESCRIBED AS THAT OF A MAGISTRATE. IT'S A SCREENING PROCESS.

SO IF A CASE -- IF THERE IS NO EVIDENCE TO SUPPORT THE CHARGE, AND THE MAGISTRATE BINDS SOMEBODY TO ANSWER, AND A 995 MOTION IS BROUGHT BEFORE ME AND I SAY, NO, I AM NOT GOING TO WASTE THE COUNTY'S TIME AND MONEY TRYING A CASE WHERE THERE IS NO EVIDENCE OF GUILT, I THROW IT OUT. THAT'S WHAT A 995 MOTION IS ABOUT.

WHEN ATTORNEYS FILE A 995 MOTION, THEY DIRECT MY ATTENTION TO LINE AND PAGE OF THE TRANSCRIPT AND SAY, HERE, THIS WAS WHAT WAS SAID, THIS EVIDENCE DOESN'T SUPPORT THE CHARGE. IF I AGREE, I

SAY, RIGHT, AND THE CASE IS DISMISSED, AND I THROW IT OUT ON 995.

BUT AS LONG AS THERE IS EVIDENCE TO SUPPORT THE CHARGE, I CAN'T REWEIGH THE EVIDENCE. I DIDN'T SEE THE WITNESSES. I DIDN'T GET TO HEAR THEM. SO I HAVE TO GO BY THE COLD RECORD AND SAY, IS THERE REASON TO BELIEVE THAT YOU COMMITTED, IT; AND THAT'S WHAT I GOT TO RULE ON.

NOW, WITHIN THOSE PARAMETERS, IS THERE ANYTHING ELSE YOU WANT TO ADD TO WHAT YOU FILED?

THE DEFENDANT: NO, YOUR, HONOR.

THE COURT: ALL RIGHT.

FOR THE REASONS THAT I AM TRYING TO EXPLAIN TO YOU -- BECAUSE I REALIZE WHEN YOU DO ALL OF THIS WRITING AND ALL THIS PAPERWORK, YOU ARE SINCERE IN WHAT YOU ARE DOING, AND I WANT TO EXPLAIN TO

YOU WHY I AM DOING WHAT I AM DOING. BUT THE MOTION IS DENIED.

TURNING TO THE MOTION TO DISQUALIFY THE PROSECUTOR, IN THE FIRST PLACE, THERE IS NO REPRESENTATIVE HERE FOR THE ATTORNEY GENERAL. THIS IS NOT A CASE THAT THE ATTORNEY GENERAL HAS TO TAKE OVER. THERE ARE CASES WHERE THE SECTION THAT YOU RELY ON, 1424 OF THE PENAL CODE, IS A SITUATION WHERE THERE IS A CONFLICT OF INTEREST.

FOR EXAMPLE, THERE HAVE BEEN A COUPLE CASES IN RECENT YEARS WHERE A DEPUTY DISTRICT ATTORNEY HAS GOTTEN INTO TROUBLE AND WAS PROSECUTED; AND BECAUSE OF THE FACT THAT HE WORKED AS A DEPUTY DISTRICT ATTORNEY, THE ENTIRE OFFICE RECUSED ITSELF FROM THE CASE AND

SAID, WE CAN'T HANDLE THIS PROSECUTION BECAUSE THERE IS A CONFLICT OF INTEREST.

EVEN THOUGH THERE MIGHT NOT BE ANY REAL CONFLICT, EVEN THOUGH THIS PARTICULAR DEPUTY D.A. MIGHT BE ABLE TO COMPLETELY IMPARTIALLY PROSECUTE THE CASE, THERE WOULD ALWAYS BE THAT PERCEPTION. SO THE WHOLE OFFICE GETS OUT, AND THE ATTORNEY GENERAL TAKES OVER AND THEY PROSECUTE THE CASE.

OF IF THERE IS A CONFLICT EVEN WITH INVOLVEMENT WITH A DEPUTY DISTRICT ATTORNEY, IF A DEPUTY D.A. IS GOING TO BE A PRINCIPAL WITNESS IN THIS CASE, THEN THE OFFICE WILL STEP OUT ON THE BASIS THAT THERE IS TOO MUCH DANGER THAT THERE COULD BE -- THAT IT COULD BE PERCEIVED THERE WAS A CONFLICT OF INTEREST.

BUT THAT'S THE ONLY WAY THAT YOU RECUSE THE PROSECUTOR. A DEFENDANT CAN'T GET RID OF A PROSECUTOR BECAUSE HE DOESN'T LIKE HIM.

YOU CITE THE FACT THAT IT'S AGAINST THE LAW FOR SOMEBODY TO SUBORN PERJURY. WELL, ALL ATTORNEYS KNOW THAT. WE KNOW IT'S AGAINST THE LAW FOR SOMEBODY TO DELIBERATELY ASK A QUESTION TO ELICIT AN UNTRUTHFUL ANSWER. BUT, AGAIN, I HAVE NO EVIDENCE OF THAT.

THE FACT THAT A WITNESS MAY HAVE SAID ONE THING TO A POLICE OFFICER AT THE TIME OF AN INITIAL REPORT AND CHANGED THAT STORY AND SAID SOMETHING AFTERWARD, OR THE FACT A WITNESS MAY HAVE SAID, I DIDN'T TELL THE TRUTH TO THE POLICE OFFICER FOR REASONS OF MY OWN -- LIKE IN THIS CASE, THE GUN SITUATION, I

DIDN'T WANT THEM SEIZING MY WHOLE GUN COLLECTION AND THEN TO HAVE TO FIGHT TO GET MY GUNS BACK, SO I LIED TO THEM INITIALLY ABOUT GUNS; BUT NOW HE STRAIGHTENS IT OUT AT THE PRELIMINARY HEARING. NOW, WHEN IT'S BOUGHT OUT, IT DOESN'T MEAN THAT MR. FAGAN PARTICIPATED IN THE ORIGINAL FALSEHOOD OR THAT THAT PERSON IS NOW PERJURING HIMSELF.

YOU HAVE TO REMEMBER THE STATEMENT MADE TO THE COP WASN'T UNDER OATH. THE ONLY TIME HE IS UNDER OATH IS WHEN HE TAKES THE WITNESS STAND AND SWEARS TO TELL THE TRUTH. SO THE PREVIOUS INCONSISTENT STATEMENTS THAT WERE MADE BY WITNESSES DO NOT AUTOMATICALLY PROVE PERJURY, BECAUSE THEY WEREN'T STATEMENTS THAT WERE

MADE UNDER OATH AT THE TIME THAT HE TALKED TO A POLICE OFFICER.

BUT, AGAIN, I AM TRYING TO EXPLAIN TO YOU THAT THE MOTION TO DISQUALIFY THE PROSECUTOR IS NOT WELL TAKEN BECAUSE THERE IS -- IN ALL YOUR PAPERS THERE IS NO CONFLICT AS FAR AS HE IS CONCERNED. MR. FAGAN PROSECUTES CASES AND HAS PROSECUTED HUNDREDS AND HUNDREDS OF CASES.

SOME PEOPLE HE MAY FEEL A LITTLE BIT SORRY FOR, MAYBE HE FEELS SOME KINDLY FEELING TO; OTHER PEOPLE HE MAY DISLIKE INTENTIONALLY. IT DOESN'T MAKE ANY DIFFERENCE. HE IS A PROFESSIONAL, AND HE HAS A JOB TO DO. WHETHER OR NOT YOU LIKE MR. FAGAN OR WHETHER HE LIKES YOU IS COMPLETELY IMMATERIAL. HE IS A

PROSECUTOR, AND IN THIS COURT HE WILL PERFORM AS A PROFESSIONAL.

AND IF THERE WERE ANY PERSONALITY INJECTED INTO IT, THAT'S PART OF MY JOB TO CONTROL THAT AND SEE THAT IT DOESN'T HAPPEN; AND I CAN ASSURE YOU THAT WON'T HAPPEN. MR. FAGAN IS A VERY EXPERIENCED PROSECUTOR AND KNOWS THE RULE AND PLAYS BY THE RULES.

BUT AS FAR AS YOUR MOTION TO DISQUALIFY, YOU DON'T HAVE ANY GROUNDS FOR IT.

THE DEFENDANT: YOUR HONOR, HIS STAR WITNESS, SO TO SPEAK CHANGED HIS STORY THREE TIMES ON THE WITNESS STAND.

IS THAT PERJURY OR IS THAT NOT PERJURY?

THE COURT: MR. FAGAN DIDN'T TESTIFY.

THE DEFENDANT: IT'S LINED OUT IN THE MOTION.

THE COURT: MR. FAGAN DIDN'T TESTIFY. SO THE FACT THE MAN CHANGES HIS STORY, DOES THAT MEAN THAT AS SOON AS THAT HAPPENS THAT THE PROSECUTOR HAS TO RUN FOR COVER AND SAY, I CAN'T HANDLE THIS CASE ANYMORE BECAUSE MY WITNESS CHANGED HIS STORY?

IF WE DID THAT, THERE WOULD BE CASE AFTER CASE THAT COULDN'T GO FORWARD BECAUSE SOMEBODY CHANGED THEIR STORY.

NOW, YOU CAN BRING THAT OUT IN THE TRIAL AND SAY -- GO TO THE CREDIBILITY. BECAUSE THE JURY WOULD BE INSTRUCTED THAT ONE OF THE THINGS -- ONE OF THE CRITERIA THEY GET TO USE IN JUDGING THE CREDIBILITY OF THE TESTIMONY OF WITNESSES

IS ANY PRIOR INCONSISTENT STATEMENTS THAT THESE WITNESSES MAKE.

ALSO I WILL INSTRUCT THE JURY IN THE COURSE OF THIS TRIAL THAT IF YOU FIND THAT A WITNESS HAS MADE AN UNTRUTHFUL STATEMENT ON A PRIOR OCCASION, THAT THAT'S A FACTOR THAT YOU CAN TAKE INTO CONSIDERATION IN WEIGHING HIS CREDIBILITY.

AND, FURTHER, THE JURY IS INSTRUCTED THAT IF YOU FIND A WITNESS HERE IN THIS COURTROOM TO BE UNTRUTHFUL, YOU MAY REJECT THE WHOLE TESTIMONY OF SUCH A WITNESS, UNLESS YOU BELIEVE IN OTHER PARTICULARS THE WITNESS HAS SWORN TO THE TRUTH. THE JURY IS TOLD THAT.

IF THEY DECIDE A QUESTION OF FACT - - AND THE JURY IS THE EXCLUSIVE JUDGE OF THE FACTS AND CREDIBILITY OF THE

WITNESSES. BUT IF THE JURORS GO BACK THERE AND THEY AGREE WITNESS "A" LIED ON THE STAND, THEN THEY CAN SAY, LET'S THROW OUT ALL OF HIS TESTIMONY, LET'S NOT CONSIDER ANYTHING HE HAD TO SAY. THAT'S WHAT THE LAW IS. THEY MAY DO THAT. THEY DON'T HAVE TO, BUT THEY MAY, UNLESS THEY FIND IN OTHER PARTICULARS HE TOLD THE TRUTH.

YOU SEE, AS A PRACTICAL MATTER, THEY SAY, WELL, HE TOLD THE TRUTH ABOUT HIS NAME, TOLD THE TRUTH ABOUT WHERE HE LIVED, SO WE DON'T HAVE TO THROW THAT OUT, OR WHERE HE WAS ON A PARTICULAR OCCASION. BUT AS FAR AS HIS CRITICAL TESTIMONY IS CONCERNED, THEY CAN THROW IT ALL OUT.

BUT THAT'S SOMETHING YOU CAN ARGUE TO THE JURY, BUT IT DOESN'T DISQUALIFY THE PROSECUTOR.

SOMETIMES WITNESSES WILL CHANGE THEIR TESTIMONY COMPLETELY. SOMETIMES WE HAVE A SITUATION WHERE WITNESSES REFUSE TO ANSWER QUESTIONS, OR SAY, EVERYTHING I SAID AT THE PRELIMINARY HEARING WAS A LIE, AND I DON'T WANT TO TESTIFY HERE, I REPUDIATE EVERYTHING I SAID. THE CASE DOESN'T HAVE TO BE DISMISSED.

THERE ARE CASES THAT SAY UNDER THOSE CIRCUMSTANCES, THE JURY CAN HAVE THE PRELIMINARY HEARING TESTIMONY READ, AND THEY DECIDE WHETHER IT WAS TRUTHFUL OR NOT. THAT'S A SPECIAL SITUATION THAT'S CALLED GREENING A WITNESS, BECAUSE THAT CASE WAS PEOPLE

VERSUS GREEN THAT SAID THAT YOU COULD DO THAT. THAT HAPPENS OCCASIONALLY. IT'S HAPPENED IN THIS VERY COURT.

THESE ARE ALL THINGS THAT COME UP IN THE COURSE OF THE TRIAL. WHEN WE GO TO TRIAL ON THIS CASE, I WILL -- AS I TOLD YOU BEFORE, I AM NOT GOING TO BE YOUR ATTORNEY, BUT I WILL DO EVERYTHING IN MY POWER TO SEE TO IT THAT YOU HAVE A FAIR TRIAL AND THAT THE TRIAL IS CONDUCTED WITHIN THE RULES AND THAT EVERY RIGHT OF YOURS IS PROTECTED.

BUT THE MOTION TO DISQUALIFY THE PROSECUTOR, AS I SAY, IS NOT WELL TAKEN AND IT IS DENIED. HOWEVER, AGAIN, YOU MADE YOUR RECORD. YOUR MOTIONS ARE HERE, THEY ARE PART OF THE FILE, AND EVERYTHING THAT I HAVE SAID IS ALSO PART OF THE RECORD SUBJECT TO APPELLATE

REVIEW. SO IF YOU FEEL THAT I HAVE ERRED IN ANYTHING THAT I HAVE SAID, WHY, YOU MADE YOUR RECORD AND IT CAN BE TAKEN UP.

THE DEFENDANT: YES, I REALIZE THAT. I JUST WANT TO GET A FAIR AND IMPARTIAL TRIAL.

THE COURT: THAT'S WHAT WE ARE GOING TO DO.

THE DEFENDANT: I HAVE NOTHING PERSONALLY AGAINST MR. FAGAN OR THIS COURT OR ANYONE ELSE INVOLVED. I HAVE BEEN LOCKED UP A YEAR AND A HALF FOR THIS, AND IT'S GETTING REAL OLD.

THE COURT: BUT IT'S NOT GOING TO GET MUCH OLDER. WE ARE GOING TO FIX THE TRIAL DATE NOW ON THE 17TH OF AUGUST. WE ARE ACTUALLY GOING TO START THE TRIAL ON THAT DAY, THE GOOD LORD

WILLING. THAT WILL BE THE TRIAL DATE. YOU WILL BE ORDERED BACK TO COURT ON THAT DAY READY TO PROCEED FOR TRIAL. WE WILL SEE TO IT THAT WE ARE AVAILABLE FOR TRIAL ON THAT DATE.

THE DEFENDANT: YES, YOUR HONOR.

I HAVE ONE OTHER REQUEST OF THE COURT. I WOULD LIKE TO HAVE THE ASSISTANCE OF COUNSEL AT THE TRIAL. I AM NOT REAL GOOD AT PUBLIC SPEAKING. I AM DOING OKAY AS FAR AS THE LAW WORK AND STUFF. OBVIOUSLY, I AM NOT A LAWYER, BUT I NEED SOMEBODY TO HELP ME PRESENT THE CASE.

THE COURT: YOU SEE, I CAN'T DO THIS, MR. ROBBINS. WHAT YOU FILED TODAY IS A GOOD EXAMPLE. YOU WANT TO FILE THESE MOTIONS. ANY LAWYER WOULD GLANCE AT THIS STUFF AND SAY, FROM A LAWYER' STANDPOINT -- I AM

NOT SAYING THIS TO PUT YOU DOWN -- BUT FROM A LAWYER'S STANDPOINT, THIS IS GARBAGE, I WON'T FILE IT, I WON'T PUT MY NAME ON IT.

YOU SAY, WELL YOU DON'T' HAVE TO, I AM IN PRO PER.

AND HE WOULD SAY, HOW CAN I BE YOUR ADVISOR IF YOU WON'T LISTEN TO MY ADVICE?

IF YOU WANT TO CALL THE SHOTS AND RUN THE TRIAL, I AM NOT GOING TO ASK AN EXPERIENCED ATTORNEY WHO IS TRAINED IN LAW SCHOOL AND WHO IS A CRIMINAL LAWYER TO SIT THERE AND PLAY SECOND FIDDLE AND HAVE YOU CALL THE SHOTS AND TO HAVE HIM NOT BE ABLE TO RUN THE TRIAL. I WOULDN'T DO IT AS AN ATTORNEY. I WOULDN'T ACCEPT THAT POSITION. THERE IS NO ATTORNEY I WOULD PUT IN THAT POSITION.

THE DEFENDANT: I WOULDN'T INSULT THE ATTORNEY'S INTELLIGENCE. I DO NEED SOME HELP PRESENTING THE EVIDENCE AT THE TRIAL.

I KNOW THE COURT IS AWARE OF THE RECENT CASE LAWS IN REFERENCE TO APPOINTING CO-COUNSEL AND ADVISORY COUNSEL, SO I DON'T NEED TO QUOTE THAT TO THE COURT; BUT I AM ASKING FOR THE ASSISTANCE OF COUNSEL TO HELP ME PRESENT MY DEFENSE.

THE COURT: YOU SEE, WHAT HAPPENED IN THIS CASE -- I KNOW IN SOME OF YOUR MOVING PAPERS YOU HAVE SAID THAT YOU FEEL THAT MR. SEIFER WAS INCOMPETENT AND DIDN'T PROPERLY REPRESENT YOU; BUT MR. SEIFER IS ONE OF THE MOST EXPERIENCED ATTORNEYS. AND HE HAPPENS TO WORK FOR THE PUBLIC DEFENDER'S OFFICE; BUT HE WOULD BE A

CAPABLE, EXPERIENCED ATTORNEY IN THE PRIVATE SECTOR, AS WELL. HE WAS YOUR ATTORNEY.

ALL THAT I CAN DO FOR SOMEBODY WHO DOESN'T HAVE MONEY TO HIRE AN ATTORNEY IS TO APPOINT THE PUBLIC DEFENDER. THAT'S THE ONLY OPTION THAT I HAVE, UNLESS THERE IS A CONFLICT.

THE DEFENDANT: I BELIEVE THERE IS A CONFLICT. MY FAMILY HAS FILED A LAWSUIT AGAINST THE PUBLIC DEFENDER'S OFFICE AND THE COUNTY IN REFERENCE TO THIS.

THE COURT: AT THE TIME THE PUBLIC DEFENDER'S OFFICE WAS RELIEVED, THERE WAS NOT A CONFLICT; AND AT THAT TIME THERE WAS NO MARSDEN MOTION FILED -- THERE WAS A MARSDEN MOTION FILED, BUT AT THAT TIME THERE WAS NO CONFLICT. AND

YOU ELECTED TO GO PRO PER. THIS WAS YOUR CHOICE, AND YOU HAVE BEEN PRO PER.

YOU FILED EVERY POSSIBLE MOTION THAT YOU COULD FILE TO DELAY THIS MATTER AND PUT IT OFF AND TO KEEP JUDGES FROM HEARING YOUR MATTER AND KEEP THE MATTER FROM BEING BROUGHT TO TRIAL. NOW WE HAVE COME DOWN TO THE MOMENT OF TRUTH. YOU HAVE DECIDED TO BE YOUR OWN ATTORNEY, AND THIS IS YOUR BED THAT YOU HAVE MADE. I AM NOT GOING TO APPOINT ADVISORY COUNSEL.

THE MATTER WILL PROCEED TO TRIAL ON THE 17TH. YOU ARE THE ATTORNEY. AS I SAID, I WILL DO EVERYTHING I CAN TO INSURE THAT YOU HAVE A FAIR TRIAL, BUT I AM NOT GOING TO APPOINT ADVISORY COUNSEL. IT'S A MATTER OF DISCRETION WITH ME. I EXERCISE MY DISCRETION. THE ANSWER IS NO.

THE DEFENDANT: YES, SIR.

(PROCEEDING CONCLUDED.)

LEE ROBBINS
E-69926 1-A2 07
P.O. Box W
Represa, CA 95671

COURT OF APPEAL STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 4

RE: PEOPLE OF THE STATE OF CALIFORNIA
-vs-
ROBBINS, LEE
2 Criminal B054733
Los Angeles No. A481636

TO THE HONORABLE JUDGE WOODS;

On 4-26-91 I sent a letter to this court requesting new counsel.
TO DATE I HAVE RECEIVED NO REPLY.

On 4-26-91 I sent a copy of the above mentioned letter to the;
California Appellate Project
3580 Wilshire Blvd.
Suite 1755
Los Angeles, CA

TO DATE I HAVE RECEIVED NO REPLY.

On 5-21-91 I sent copies of the above letters to my parents with the instructions to send certified copies to the court and call as to the status of my request for new counsel. To date that letter has not been received by my parents.

On 4-16-91 at 10 AM I was removed from my cell for a cell search, the corrections officer who entered my cell and searched, just by chance happens to be officer Renaldo, a Los Angeles County Sheriffs Deputy out of the Lakewood, CA Sheriffs station, who also just happens to be one of the deputies involved in my case! I feel the odds of this being a chance occurance to be too great to not merit investigation by this court.

On 5-5-91 I purchased a copy of the trial transcript from my appointed attorney general (Date Received)
Mr. David H. Goodwin
P.O. Box 95579

I compared the cross-exam portion to the pages of printed questions I asked at trial (I was pro-per) I was not overly surprised to see where many pertinent questions and answers were deleted. Items as the homicide sgt. Falsifing the police reports, for example where he says "the extradition proceedings were completed and the authorization by the governor of Arkansas was given to return the suspect to the Los Angeles area." No extradition hearing was ever held in Arkansas and Sgt. Cox's request for a governors warrant was DENIED! There are many such items as this that I have found to be deleted from the trial record, if the court wishes I can provide a fair summation from my trial notes of the portions of the record that has been deleted.

It is my understanding that copies of all motions made that were denied in whole or part, and are to be part of

the normal record on appeal, these have also been deleted from the record I have received.

I would respectfully request this court to order the following papers, records and transcripts be prepared to augment, expand and complete the record for appeal.

A copy of the "murder book" retained by the D.A., containing police reports, coroners reports, ballistic reports, etc.

A true and correct copy of the trial transcript be prepared from the court reporters records (if they still exist.)

Los Cerritos Municipal Court:
copies of two Marsden Hearings held between 9-15-89 and 12-5-89

Norwalk Superior Court:

12-20-89 MARSDEN HEARING - DENIED

3-1-90 1368 P.C. HEARING, COPIES OF DOCTORS REPORTS

3-7-90 MARSDEN HEARING - DENIED

4-16-90 170.1 MOTION, D.A. ORDERED TO COMPLY WITH DISCOVERY. REQUEST FOR COUNSEL DENIED.

5-2 90 REQUEST FOR COUNSEL DENIED. WRIT OF MANDATE DENIED.

6-6-90 HITCH/TROMBETTA MOTION DENIED.

7-13-90 REFUSED TO HEAR 995 MOTION.
REFUSED TO RE-HEAR REQUEST FOR COUNSEL.
REFUSED TO RE-HEAR
HITCH/TROMBETTA MOTION.
REFUSED TO ACCEPT WRIT.
DENIED MOTION TO CONTINUE.
DENIED REQUEST FOR ADDITIONAL INVESTIGATOR FUNDS.
1538.5 MOTION RULED MOOT.

7-16-90 170.1 MOTION

8-2-90 170.1 MOTION DENIED BY JUDICIAL COUNCIL, JUDGE ARMSTRONG PERJURED HIMSELF WHEN HE HOLD JUDICIAL COUNCIL NO. 995 REQUEST WAS MADE ON 13-90

8-9-90 995 MOTION DENIED.
1424 MOTION DENIED.

At this hearing I requested to be represented at trial by counsel, I said I have done all that I possibly can, I am not qualified to conduct a trial and need counsel, Judge Armstrong stated that I had made my bed and could now sleep in it, he was not going to appoint counsel!

8-20-90 THE PEOPLE'S OPENING STATEMENT

To briefly re-state my reasons for requesting new counsel:

I have not heard from Mr. Goodwin since 4-18-91.

He has failed to respond to the last two letters I sent him, and in the letters he did bother to respond to his answers

indicated that he did not read and/or understand the questions I posed or the materials I sent him.

Mr. Goodwin is not QUALIFIED AND/OR willing to handle this appeal. His complete failure to communicate with me, his inability to reach logical conclusions from the materials the court and myself have sent him, his inability to apply statutory or case law to the issues I have raised leaves me with no other option but to request new counsel be appointed so I can adequately prepare and present my case for a fair and just hearing before this honorabe court.

I have been in contact with a local attorney here who is qualified and able to handle the extensive research and preparation needed to present this case before you.

I respectfully request the court to appoint as new counsel on appeal:

Mr. Mark Christensen
Attorney at Law
P.O. Box 163269
Sacramento, CA 92663

Respectfully submitted

Lee Robbins

I solemly affirm the foregoing to be true and correct.

Lee Robbins
Appellant

DATED: June 15, 1991
At Represa, CA

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,	)	No. B054733
	)	
Plaintiff and Respondent,	)	(Super.Ct.No. A481636)
	)	
v.	)	ORDER
	)	
LEE ROBBINS,	)	
	)	
Defendant and Appellant.	)	
	)	

THE COURT:*

The letter to the clerk dated September 28, 1991, and filed October 2, 1991, is deemed a motion to augment the record. No good cause having been shown, the motion is denied. An appeal must be decided upon the record of the proceedings which occurred in the trial

court. (People v. Wein (1958) 50 Cal.2d 383, 411.) On May 3, 1991, this court ordered the record augmented upon the request of counsel, whose duty it is to see that the record is properly augmented for review.

IN THE

COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION: 4

People of the State of California
vs.
Robbins, Lee
2 Criminal B054733
Los Angeles No. A481636

THE COURT:

Counsel appointed to represent appellant on appeal has filed appellant's opening brief. Counsel's inability to find any arguable issues may readily be inferred from the failure to raise any. (People v. Wende (1979) 25 Cal. 3d 436, 442.) Such opening brief having been read and considered by this court,

IT IS ORDERED that unless it has already been done, counsel shall send the record on this appeal and a copy of appellant's opening brief to appellant immediately.

Within 30 days from the date of this order, appellant my submit by brief or letter any grounds of appeal, contentions, or arguments which appellant wishes this court consider.

WOODS, P.J.
Presiding Justice